DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Volume 17

Title 32

Labor

to

Title 34

Public Utilities

JUNE 2014 CUMULATIVE SUPPLEMENT

LexisNexis®

5443011

ISBN 978-0-7698-6591-1 (Volume 17)

ISBN 978-0-7698-6495-2 (Code set)

Matthew Bender & Company, Inc.
701 East Water Street, Charlottesville, VA 22902
www.lexisnexis.com
Customer Service: 1-800-833-9844

(Pub.45948)

COUNCIL OF THE DISTRICT OF COLUMBIA

Phil Mendelson, *Chairman*

Yvette M. Alexander
Marion Barry
Anita Bonds
Muriel Bowser
David A. Catania
Mary M. Cheh
Jack Evans
Jim Graham
David Grosso
Kenyan R. McDuffie
Vincent B. Orange, Sr.
Tommy Wells

OFFICE OF THE GENERAL COUNSEL

Under Whose Direction This Volume Has Been Prepared

V. David Zvenyach, *General Counsel*

John Hoellen, *Legislative Counsel*

Benjamin F. Bryant, Jr., *Codification Counsel*

Karen R. Barbour, *Legal Assistant*

*

PREFACE

These annual cumulative pocket parts update the District of Columbia Official Code, 2001 Edition, with permanent, temporary, and emergency legislation and judicial constructions contained in annotations. These pocket parts contain the Laws, general and permanent in their nature, relating to or in force in the District of Columbia (except such laws as are of application in the General and Permanent Laws of the United States) in effect as of April 1, 2014.

This Supplement also updates the D.C. Code annotations by including notes taken from District of Columbia cases appearing in the following sources: Atlantic Reporter, 3d Series Supreme Court Reporter Federal Reporter, 3d Series Federal Supplement, 2d Series Bankruptcy Reporter.

Current legislation between pamphlets or pocket parts can be accessed online at www.lexisnexis.com/advance, www.lexisnexis.com/research, and http://dcclims1.dccouncil.us/lims.

The unannotated District of Columbia Official Code can be accessed on the District of Columbia Council Website at http://www.dccouncil.us.

Later laws and annotations will be cumulated in subsequent annual Pocket Parts.

Visit our website at http://www.lexisnexis.com for an online bookstore, technical support, customer service, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, email us at customer.support@lexisnexis.com, or write to: D.C. Editor, LexisNexis, 701 East Water Street, Charlottesville, VA 22902-5389.

June, 2014 LexisNexis

DIVISION V. LOCAL BUSINESS AFFAIRS.

TITLE 32. LABOR.

Chapter
1A. Employee Sick Leave.
2. Employment of Minors.
7C. Job Training and Adult Education Programs Quarterly Reports.
10. Minimum Wages.
13. Wages and Workplace Fraud.
13C. Prohibition on Discrimination against the Unemployed.
15. Workers' Compensation.
16. Workforce Investment Implementation.

Chapter 1A. Employee Sick Leave.

Sec.
32-131.01. Definitions.
32-131.02. Provision of paid leave.
32-131.06. Effect on existing employment benefits.
32-131.08. Prohibited acts.
32-131.09. Posting requirement.
32-131.10a. Statute of limitations.
32-131.10b. Employer records.
32-131.12. Penalties.
32-131.13. Rules.
32-131.15. Report by the District of Columbia Auditor.
32-131.15a. Public education and outreach.

§ 32-131.01. Definitions.

For the purposes of this chapter, the term:

(1) "Domestic violence" means an intrafamily offense as defined in § 16-1001(5) [now (8)].

(2)(A) "Employee" shall have the same meaning as provided in § 32-501(1).

(B) The term "employee" shall not include:

(i) An independent contractor;

(ii) A student;

(iii) Health care workers who choose to participate in a premium pay program; or

(iv) Restaurant wait staff and bartenders who work for a combination of wages and tips.

(3)(A) "Employer" means a legal entity (including a for-profit or nonprofit firm, partnership, proprietorship, sole proprietorship, limited liability company, association, or corporation), or any receiver or trustee of an entity (including the legal representative of a deceased individual or receiver or trustee of an individual), who employs an employee.

(B) The term "employer" shall include the District government.

(4) "Family member" means:

(A)(i) A spouse, including the person identified by an employee as his or her domestic partner, as defined in § 32-701(3);

(ii) The parents of a spouse;

(iii) Children (including foster children and grandchildren);

(iv) The spouses of children;

(v) Parents;

(vi) Brothers and sisters; and

(vii) The spouses of brothers and sisters.

(B) A child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility; or

(C) A person with whom the employee shares or has shared, for not less than the preceding 12 months, a mutual residence and with whom the employee maintains a committed relationship, as defined in § 32-701(1).

(5) "Paid leave" means accrued increments of compensated leave provided by an employer for use by an employee during an absence from employment for any of the reasons specified in § 32-131.02(b).

(6) "Premium pay program" means a plan offered by an employer pursuant to which an employee may elect to receive extra pay in lieu of benefits.

(7) "Sexual abuse" means any offense described in Chapter 30 of Title 22 [§ 22-3001 et seq.]

(8) "Student" means an employee who:

(A)(i) Is a full-time student, as defined by an accredited institution of higher education;

(ii) Is employed by the institution at which the student is enrolled;

(iii) Is employed for less than 25 hours per week; and

(iv) Does not replace an employee subject to this chapter; or

(B) Is employed as part of the Year Round Program for Youth, as established by the Department of Employment Services.

(May 13, 2008, D.C. Law 17-152, § 2, 55 DCR 3452; Feb. 22, 2014, D.C. Law 20-89, § 2(a), 61 DCR 317.)

Legislative history of Law 20-89. — Law 20-89, the "Earned Sick and Safe Leave Amendment Act of 2013," was introduced in Council and assigned Bill No. 20-89. The Bill was adopted on first and second readings on December 3, 2013, and December 17, 2013, respectively. Signed by the Mayor on January 2, 2014, it was assigned Act No. 20-259 and transmitted to Congress for its review. D.C. Law 20-89 became effective on February 22, 2014.

Editor's notes.

Section 2(a)(1) of D.C. Law 20-89 would have rewritten (2) to read as follows:

"(2) 'Employee' means any individual employed by an employer, but shall not include:

"(A) Any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization;

"(B) Any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions;

"(C) Any individual employed as a casual babysitter, in or about the residence of the employer.

"(D) An independent contractor;

"(E) A student; or

"(F) Health care workers who choose to participate in a premium pay program.".

Section 2(a)(2) of D.C. Law 20-89 would have stricken the phrase "who employs" and inserted the phrase "who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of" in its place in (3).

Applicability of D.C. Law 20-89: Section 3 of D.C. Law 20-89 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-131.02. Provision of paid leave.

(a)(1) An employer with 100 or more employees shall provide for each employee not less than one hour of paid leave for every 37 hours worked, not to exceed 7 days per calendar year.

(2) An employer with at least 25, but not more than 99, employees shall provide for each employee not less than one hour of paid leave for every 43 hours worked, not to exceed 5 days per calendar year.

(3) An employer with 24 or fewer employees shall provide not less than one hour of paid leave for every 87 hours worked, not to exceed 3 days per calendar year.

(4) For the purposes of paragraphs (1) through (3) of this subsection, the number of employees of an employer shall be determined by the average monthly number of full-time equivalent employees for the prior calendar year. The average monthly number shall be calculated by adding the total monthly full-time equivalent employees for each month and dividing by 12.

(5) In the case of employees who are exempt from overtime payment under section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.), employees shall not accrue leave for hours worked beyond a 40-hour work week.

(b) Paid leave accrued under this section may be used by an employee for any of the following:

(1) An absence resulting from a physical or mental illness, injury, or medical condition of the employee;

(2) An absence resulting from obtaining professional medical diagnosis or care, or preventive medical care, for the employee, subject to the requirement of subsection (d) of this section;

(3) An absence for the purpose of caring for a child, a parent, a spouse, domestic partner, or any other family member who has any of the conditions or needs for diagnosis or care described in paragraph (1) or (2) of this subsection; or

(4) An absence if the employee or the employee's family member is a victim of stalking, domestic violence, or sexual abuse; provided, that the absence is directly related to social or legal services pertaining to the stalking, domestic violence, or sexual abuse, to:

(A) Seek medical attention for the employee or the employee's family member to recover from physical or psychological injury or disability caused by domestic violence or sexual abuse;

(B) Obtain services from a victim services organization;

(C) Obtain psychological or other counseling;

(D) Temporarily or permanently relocate;

(E) Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence or sexual abuse; or

(F) Take other actions to enhance the physical, psychological, or economic health or safety of the employee or the employee's family member or to enhance the safety of those who associate or work with the employee.

(c)(1) Paid leave under this section shall accrue in accordance with the employer's established pay period. An individual shall accrue paid leave when he or she qualifies as an employee.

(2) An employee's unused paid leave accrued during a 12-month period shall carry over annually. An employee shall not use in one year more than the maximum hours as allowed in subsection (a)(1), (2), and (3) of this section, unless the employer chooses otherwise. Unused paid leave accrued under this chapter shall not be reimbursed upon the termination or resignation of any employee.

(3) Repealed.

(4) Upon mutual consent by the employee and the employer, an employee who chooses to work additional hours or shifts during the same or next pay period in lieu of hours or shifts missed, shall not use paid leave; provided, that the employer does not require the employee to work such additional hours or shifts.

(d) An employee shall make a reasonable effort to schedule paid leave under subsection (b) of this section in a manner that does not unduly disrupt the operations of the employer.

(e) If an employee does not suffer a loss of income when absent from work, for the number of days up to the days of paid leave provided for in subsection (a)(1), (2), and (3) of this section, an employer shall not be required to provide paid leave for such employee in accordance with this chapter. Notwithstanding the foregoing sentence, the provisions of § 32-131.08 shall apply to employees who do not suffer a loss of income when absent from work.

(f) If employees of beauty, hair, and nail salons are paid by commission (whether commission only or base wage plus commission), the sick leave rate of pay shall be calculated as follows: divide the employee's total earnings in base wages and commissions for the prior calendar year by the total hours worked as a commissioned employee during the prior calendar year. If employees do not have a prior calendar year's work history, divide the employee's total earnings in base wages and commissions since the employee's date of hire by the total hours worked as a commissioned employee since that date.

(g) [Not funded].

(May 13, 2008, D.C. Law 17-152, § 3, 55 DCR 3452; Mar. 25, 2009, D.C. Law 17-353, § 311(a), 56 DCR 1117; Feb. 22, 2014, D.C. Law 20-89, § 2(b), 61 DCR 317.)

Section references. — This section is referenced in § 32-131.01, § 32-131.04, and § 32-131.05.

Legislative history of Law 20-89. — See note to § 32-131.01.

Editor's notes. — Section 2(b)(1) of D.C. Law 20-89 would have amended (c) to read as follows:

"(c)(1) Paid leave under this act shall accrue in accordance with the employer's established pay period. An individual shall accrue paid leave at the beginning of his or her employment. An employee may begin to access paid leave after 90 days of service with his or her employer.

"(2) If an employee is transferred to a separate division, entity, or location within the District, or transferred out of the District and then transferred back to a division, entity, or location within the District, but remains employed by the same employer, the employee shall be entitled to all paid leave accrued at the

prior division, entity, or location and shall be entitled to use all paid leave as provided in this act.

"(3) When there is a separation from employment and the employee is rehired within one year of separation by the same employer, previously accrued unused paid leave shall be reinstated. The employee shall be entitled to use accrued paid leave and accrue additional paid leave immediately upon the re-commencement of employment; provided, that the employee had previously been eligible to use paid leave. If there is a separation of more than one year, an employer shall not be required to reinstate accrued paid leave and the rehired employee shall be considered to have newly commenced employment.

"(4) An employee who is discharged after the completion of a probationary period of 90 days or more, and is rehired within 12 months, may access paid leave immediately".

Section 2(b)(2) of D.C. Law 20-89 would have added (g) to read as follows:

"(g) Notwithstanding the requirements in subsections (a)(1)-(4) of this section, for an employee of a restaurant or bar who regularly receive tips, commissions, or other gratuities to supplement a base wage that is below the minimum wage as established in section 4(a) of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1003(a)) ('1992 Act'), the employer shall provide the employee not less than one hour of paid leave for every 43 hours worked, not to exceed 5 days per calendar year. The paid leave shall be compensated in accordance with the District minimum wage, as established in section 4(a) of the 1992 Act".

Applicability of D.C. Law 20-89: Section 3 of D.C. Law 20-89 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-131.06. Effect on existing employment benefits.

(a) This chapter shall not diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid leave rights to employees than the rights established under this chapter.

(b) The paid leave requirements under this chapter shall not be waived for less than 3 paid leave days by the written terms of a bona fide collective bargaining agreement.

(May 13, 2008, D.C. Law 17-152, § 7, 55 DCR 3452; Feb. 22, 2014, D.C. Law 20-89, § 2(c), 61 DCR 317.)

Legislative history of Law 20-89. — See note to § 32-131.01.

Editor's notes. — Section 2(c) of D.C. Law 20-89 would have amended (b) to read as follows:

"(b) The paid leave requirements under this act shall not be waived for less than 3 paid leave days per calendar year by the written terms of a bona fide collective bargaining agreement; provided, that the paid leave requirements under this act shall not apply to any employee in the building and construction industry covered by a bona fide collective bargaining agreement that expressly waives the requirements in clear and unambiguous terms".

Applicability of D.C. Law 20-89: Section 3 of D.C. Law 20-89 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-131.08. Prohibited acts.

(a) A person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided by this chapter.

(b) An employer shall not discharge or discriminate in any manner against an employee because the employee:

(1) Opposes any practice by an employer made unlawful by this chapter;

(2) Pursuant or related to this chapter:

(A) Files or attempts to file a charge;

(B) Institutes or attempts to institute a proceeding; or

(C) Facilitates the institution of a proceeding;

(3) Gives any information or testimony in connection with an inquiry or proceeding related to this chapter; or

(4) Uses paid leave provided under this chapter.

(c) Nothing in this chapter shall prohibit an employer from establishing and enforcing a lawful policy relating to improper use of paid leave or from seeking more frequent certifications from an employee if there is evidence of a pattern of abuse of paid leave.

(d) [Not funded].

(e) [Not funded].

(May 13, 2008, D.C. Law 17-152, § 9, 55 DCR 3452; Feb. 22, 2014, D.C. Law 20-89, § 2(d), 61 DCR 317.)

Section references. — This section is referenced in § 32-131.02.

Legislative history of Law 20-89. — See note to § 32-131.01.

Editor's notes. — Section 2(d)(1) of D.C. Law 20-89 would have amended (b)(2) to read as follows:

"(2) Pursuant or related to this act:

"(A) Complains to the employer;

"(B) Files a complaint with the Department of Employment Services;

"(C) Files a civil complaint alleging a violation of any provision of this act;

"(D) Informs any person about an employer's alleged violation of this act;

"(E) Cooperates with the Department of Employment Services or another person's investigation or prosecution of any alleged violation of this act;

"(F) Opposes any policy, practice, or act that is unlawful under this act; or

"(G) Informs any person of his or her rights under this act.".

Section 2(d)(2) of D.C. Law 20-89 would have added (d) and (e) to read as follows:

"(d) An employer taking an adverse action against an employee within 90 days of any of the actions set forth in subsection (b)(2) of this section shall raise a rebuttable presumption that the employer has violated this act.

"(e) It shall be unlawful for an employer's absence control policy to count paid leave taken under this act as an absence that may lead to, or result in, discipline, discharge, demotion, suspension, or other adverse action".

Applicability of D.C. Law 20-89: Section 3 of D.C. Law 20-89 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-131.09. Posting requirement.

(a) The Mayor shall prescribe, and the Mayor shall provide to employers, and an employer shall post and maintain in a conspicuous place, a notice that sets forth excerpts from or summaries of the pertinent provisions of this chapter and information that pertains to the filing of a complaint under this chapter. The notice shall be published in all languages spoken by 3% of or 500 individuals in the District of Columbia population, whichever is less.

(b)(1) An employer who willfully violates this section shall be assessed a civil penalty not to exceed $100 for each day that the employer fails to post the notice; provided, that the total penalty shall not exceed $500.

(2) No liability for failure to post notice will arise under this section if the Mayor has failed to provide to the business the notice required by this section.

(c) An employer shall post the notice in English and all languages spoken by employees with Limited or no-English Proficiency, as defined in § 2-1931(5).

(d) Employers shall be furnished copies or summaries of this chapter prepared by the Mayor on request.

(May 13, 2008, D.C. Law 17-152, § 10, 55 DCR 3452; Mar. 25, 2009, D.C. Law 17-353, § 311(b), 56 DCR 1117; Feb. 22, 2014, D.C. Law 20-89, § 2(e), 61 DCR 317.)

Section references. — This section is referenced in § 32-131.12.

Legislative history of Law 20-89. — See note to § 32-131.01.

Editor's notes. — Section 2(e) of D.C. Law 20-89 would have amended (b)(1) to read as follows:

"(b)(1) An employer who violates this section shall be assessed a civil penalty not to exceed $100 for each day that the employer fails to post the notice; provided, that the total penalty shall not exceed $500 unless the ongoing violation is willful".

Applicability of D.C. Law 20-89: Section 3 of D.C. Law 20-89 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-131.10a. Statute of limitations.

[Not funded].

(May 13, 2008, D.C. Law 17-152, § 11a, as added Feb. 22, 2014, D.C. Law 20-89, § 2(f), 61 DCR 317.)

Effect of amendments. — The 2014 amendment by D.C. Law 20-89 added this section.

Legislative history of Law 20-89. — See note to § 32-131.01.

Editor's notes. — Section 2(f) of D.C. Law 20-89 would have added D.C. Law 17-152, § 11a, to read as follows:

"Sec. 11a. Statute of limitations.

"All civil complaints brought under this act shall be filed within 3 years of the event on which the complaint is based, except that the 3-year period shall be tolled when an administrative complaint is filed, or for any period during which the employer does not post the notice required under section 10."

Applicability of D.C. Law 20-89: Section 3 of D.C. Law 20-89 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-131.10b. Employer records.

[Not funded].

(May 13, 2008, D.C. Law 17-152, § 11b, as added Feb. 22, 2014, D.C. Law 20-89, § 2(f), 61 DCR 317.)

Legislative history of Law 20-89. — See note to § 32-131.01.

Editor's notes. — Section 2(f) D.C. Law 20-89 would have added D.C. Law 17-152, § 11b, to read as follows:

"Sec. 11b. Employer records.

"(a) Employers shall retain records documenting hours worked by employees and paid leave taken by employees for a period of 3 years, and shall allow the Mayor and the Office of the District of Columbia Auditor access to the records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this act.

"(b) When an issue arises as to an employee's entitlement to paid leave under this act, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid leave taken by the employee, or does not allow the Mayor or the Office of the

District of Columbia Auditor reasonable access to the records, there shall be a rebuttable presumption that the employer has violated this act".

Applicability of D.C. Law 20-89: Section 3 of D.C. Law 20-89 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-131.12. Penalties.

Except as provided in § 32-131.09(b), an employer who willfully violates the requirements of this chapter shall be subject to a civil penalty of $500 for the 1st offense, $750 for the 2nd offense, and $1000 for the 3rd and each subsequent offense.

(May 13, 2008, D.C. Law 17-152, § 13, 55 DCR 3452; Feb. 22, 2014, D.C. Law 20-89, § 2(g), 61 DCR 317.)

Legislative history of Law 20-89. — See note to § 32-131.01.

Editor's notes. — Section 2(g) of D.C. Law 20-89 would have amended this section to read as follows:

"Sec. 13. Enforcement and penalties.

"(a) An employee or similarly situated employees injured by a violation of this act shall be entitled to maintain a civil action or an administrative action.

"(b) If an employer fails to allow an employee to use paid leave as required by this act, the employer shall pay $500 in additional damages to the employee for each accrued day denied, regardless of whether the employee takes unpaid leave or reports to work on that day.

"(c) Except as provided in section 10(b), an employer who willfully violates the requirements of this act shall be subject to a civil penalty of $1,000 for the 1st offense, $1,500 for the 2nd offense, and $2,000 for the 3rd and each subsequent offense.

"(d) If the Mayor determines that an employer has violated any provision of this act, the Mayor shall order the employer to provide affirmative remedies including:

"(1) Back pay for lost wages caused by the employer's violation of this act;

"(2) Reinstatement or other injunctive relief;

"(3) Compensatory or punitive damages, including at least $500 for every day an employee who was denied access to paid leave was required to work; and

"(4) Reasonable attorney's fees and costs of enforcement.

"(e) An action may be maintained against any employer in a court of competent jurisdiction by any one or more employees for and on behalf of himself or themselves. An employer who violates the provisions of this act shall be liable to the employee or employees affected for:

"(1) Back pay for lost wages caused by the employer's violation of this act;

"(2) Reinstatement or other injunctive relief;

"(3) Compensatory damages or punitive damages, including at least $500 for every day an employee who was denied access to paid leave was required to work; and

"(4) Reasonable attorney's fees and costs.

"(f)(1) Where compliance with this act or regulations enacted to implement this act is not forthcoming, the Mayor shall take any appropriate enforcement action to secure compliance, including initiating a civil action and, except where prohibited by another law, revoking or suspending any registration certificates, permits or licenses held or requested by the employer or person until the violation is remedied.

"(2) To compensate the District for the costs of investigating and remedying the violation, the Department of Employment Services may also order the violating employer or person to pay to the District a sum of not more than $500 for each day or portion thereof and for each employee or person as to whom the violation occurred or continued. The funds recovered by the District under this act shall be allocated to offset the costs of implementing and enforcing this act.

"(g) In any administrative or civil action brought under this act, the Mayor or court shall award interest on all amounts due and unpaid at the rate of interest specified in D.C. Official Code §§ 28-3302(b) or 28-3302(c).

"(h) Any money awarded to an employee under this act shall be enforceable by the employee to whom the debt is owed or may be collected by the District on behalf of the employee".

Applicability of D.C. Law 20-89: Section 3 of D.C. Law 20-89 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-131.13. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this chapter within 60 days after May 13, 2008. If rules are promulgated, the Mayor shall submit the proposed rules to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within this 30-day review period, the proposed rules shall be deemed approved.

(May 13, 2008, D.C. Law 17-152, § 14, 55 DCR 3452; Feb. 22, 2014, D.C. Law 20-89, § 2(h), 61 DCR 317.)

Legislative history of Law 20-89. — See note to § 32-131.01.

Editor's notes. — Section 2(h) of D.C. Law 20-89 would have amended this section by striking the phrase "within 60 days after its effective date".

Applicability of D.C. Law 20-89: Section 3 of D.C. Law 20-89 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-131.15. Report by the District of Columbia Auditor.

The District of Columbia Auditor shall prepare and submit to the Mayor and Council, annually, a report of this chapter's economic impact on the private sector. Among other things, the District of Columbia Auditor shall audit a sample of District businesses to determine:

(1) The compliance level of businesses with the posting requirements; and

(2) Whether companies are utilizing staffing patterns to circumvent the intention of this chapter.

(May 13, 2008, D.C. Law 17-152, § 16, 55 DCR 3452; Feb. 22, 2014, D.C. Law 20-89, § 2(i), 61 DCR 317.)

Legislative history of Law 20-89. — See note to § 32-131.01.

Editor's notes. — Section 2(i) of D.C. Law 20-89 would have deleted "with the posting requirements" in (1).

Applicability of D.C. Law 20-89: Section 3 of D.C. Law 20-89 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-131.15a. Public education and outreach.

[Not funded].

(May 13, 2008, D.C. Law 17-152, § 16a, as added Feb. 22, 2014, D.C. Law 20-89, § 2(j), 61 DCR 317.)

Legislative history of Law 20-89. — See note to § 32-131.01.

Editor's notes. — Section 2(j) of D.C. Law 20-89 would have added D.C. Law 17-152, § 16a, to read as follows:

"Sec. 16a. Public education and outreach.

"(a) The Department of Employment Services shall develop and implement a multilingual outreach program to inform employees of the availability of paid leave under this act.

"(b) The program shall include the distribution of notices and other written materials in

English and in other languages to all childcare and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers within the District".

Applicability of D.C. Law 20-89: Section 3 of D.C. Law 20-89 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

CHAPTER 2. EMPLOYMENT OF MINORS.

Subchapter I. General

Sec.
32-213. Penalties.

Subchapter I. General.

§ 32-213. Penalties.

(a) A person commits an offense under this subchapter if that person:

(1) Employs a minor or permits a minor to work in violation of this subchapter, of any regulation promulgated by the Board of Education pursuant to § 32-224, or of any order issued under the provisions of § 32-203; or

(2) Interferes with the Board of Education, its officers or agents, or any other person authorized by the District to inspect places of employment of minors.

(b) A person convicted of a 1st offense under this section shall be fined not less than $1,000 nor more than $3,000, or imprisoned not less than 10 days nor more than 30 days, or both. A person convicted of a 2nd or subsequent offense under this section shall be fined not less than $3,000 nor more than $5,000, or imprisoned not less than 30 days nor more than 90 days, or both. Each day during which a violation of this subchapter occurs shall constitute a separate offense.

(c) The fines set forth in this section shall not be limited by § 22-3571.01.

(May 29, 1928, 45 Stat. 1003, ch. 908, § 15; renumbered as § 13 and amended June 15, 1976, D.C. Law 1-68, § 2(16), 23 DCR 521; July 12, 1988, D.C. Law 7-135, § 2(b), 35 DCR 4114; June 11, 2013, D.C. Law 19-317, § 112(c), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added (c).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 112(c) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 5. FAMILY AND MEDICAL LEAVE.

§ 32-501. Definitions.

Section references. — This section is referenced in § 2-1411.03, § 32-131.01, and § 32-131.04.

CASE NOTES

Eligible employee.

Employee spent less than 50% of his time working in the District of Columbia, and therefore, was not an employee eligible for coverage under the District of Columbia Family Medical Leave Act (DCFMLA), where he spent periods of time in District but was hired to work out of office in Virginia and spent less than 30% of his time in District. Hopkins v. Grant Thornton Int'l, 851 F.Supp.2d 146, 2012 U.S. Dist. LEXIS 45156 (2012), affirmed by 529 Fed. Appx. 1, 2013 U.S. App. LEXIS 9171 (D.C. Cir. 2013).

§ 32-507. Prohibited acts.

CASE NOTES

Prima facie case.

Employee pleaded prima facie case of retaliation under both Family and Medical Leave Act of 1993 (FMLA) and District of Columbia Family and Medical Leave Act (DCFMLA) because given the short period of time between April 2011, when the employee's leave commenced and when she complained, albeit informally, about the dean's interference with her DCFMLA and FMLA leave, and June 2011, when the employee's employment was terminated, causation could be inferred, at least in part, from the temporal proximity of the two events. Miles v. Univ. of the Dist. of Columbia, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 155236 (D.D.C. Oct. 30, 2013).

In this Family and Medical Leave Act of 1993 and District of Columbia Family and Medical Leave Act action, dismissal of the employee's interference claims would be inappropriate because there was a dispute as to the circumstances surrounding the employee's termination. Miles v. Univ. of the Dist. of Columbia, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 155236 (D.D.C. Oct. 30, 2013).

CHAPTER 7C. JOB TRAINING AND ADULT EDUCATION PROGRAMS QUARTERLY REPORTS.

Sec.

32-771. Department of Employment Services quarterly reports on job training and adult education programs.

§ 32-771. Department of Employment Services quarterly reports on job training and adult education programs.

(a) Beginning on February 15, 2013, the Department of Employment Services ("Department") shall transmit to the Council on a quarterly basis, and make available on the Department's website, a report on the outcomes associated with all local funding administered by the Department for job training or adult education purposes. The report shall include the following outcome measures for job training or adult education participants delineated by job training program and vendor:

(1) The amount of funding that the program or vendor, or that both the program and the vendor, received;

(2) The number of individuals enrolled in job training or adult education;

(3) The classification of instructional program codes for which they were trained;

(4) The number and percentage of those participants who were referred to the job training program or vendor who completed the job training or adult education program;

(5) The number and percentage of those participants who completed the job training or adult education program who earned a General Educational Diploma, high school diploma, or a noncredit or credit-bearing certificate or degree offered by licensed post-secondary education and training programs or vendors;

(6) Among participants who were unemployed at the start of the program, the number and percentage of participants who completed the job training or adult education program who found employment within 6 months of graduation;

(7) Among participants who found employment within 6 months of graduation, the average wage earned; and

(8) Among participants who found employment within 6 months of graduation, the number and percentage of participants who retained employment 6 months after their initial start date.

(b) The report shall also include the following outcome measures for subsidized employment programs, including the Transitional Employment Program ("TEP"), established pursuant to section § 32-1331:

(1) The number of individuals participating, by month;

(2) The number of private-sector employers that hosted a participant;

(3) The number and percentage of participating residents who receive wages from their employer in addition to their subsidized wage and the average amount of the additional wages;

(4) The average length of placement in the subsidized jobs;

(5) The number and percentage of participants who have been hired into unsubsidized jobs upon completion of the subsidized component of TEP or within 6 months of participating in the program, and the average wages of those hired; and

(6) Among program participants who found unsubsidized employment, the number and percentage of participants who retained unsubsidized employment for at least 6 months after their initial unsubsidized start date.

(c) The report shall also include the following outcome measures for training employment programs, including the On-the-Job Training program, established pursuant to § 32-241(a)(4), the:

(1) Number of individuals participating, by month;

(2) Number of private sector employers that hosted a participant;

(3) Average and median wages paid to participants whose employers are then reimbursed by the Department;

(4) Average amount and percentage paid of wage reimbursement per participant;

(5) Average duration of time participants spend in the training component of a program; and

(6) Number and percentage of participants who retain employment for an additional 6 months beyond the completion of the training at the same wages and benefits as those in comparable positions who are not associated with a program.

(Sept. 20, 2012, D.C. Law 19-168, § 2082, 59 DCR 8025.)

Legislative history of Law 19-168. — Law 19-168, the "Fiscal Year 2013 Budget Support Act of 2012," was introduced in Council and assigned Bill No. 19-743. The Bill was adopted on first and second readings on May 15, 2012, and June 5, 2012, respectively. Signed by the Mayor on June 22, 2012, it was assigned Act No. 19-385 and transmitted to Congress for its review. D.C. Law 19-168 became effective on September 20, 2012.

CHAPTER 10. MINIMUM WAGES.

Subchapter I. General

Sec.
32-1003. Requirements.
32-1004. Exceptions.
32-1009. Posting of act and regulations on premises; distribution of copies to employers.
32-1009.01. Notice requirements for tipped wages.
32-1010. Violations.
32-1011. Penalties; prosecution.
32-1012. Civil liability.

Subchapter I. General.

§ 32-1003. Requirements.

(a)(1) Except as provided in subsection (h) of this section, as of January 1, 2005, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $6.60 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act (29 U.S.C. § 206 et seq.) ("Fair Labor Standards Act"), plus $1, whichever is greater.

(2) Except as provided in subsection (h) of this section, as of January 1, 2006, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $7 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act, plus $1, whichever is greater.

(3) Except as provided in subsection (h) of this section, as of July 1, 2014, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $9.50 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act, plus $1, whichever is greater.

(4) Except as provided in subsection (h) of this section, as of July 1, 2015, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $10.50 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act, plus $1, whichever is greater.

(5) Except as provided in subsection (h) of this section, as of July 1, 2016, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $11.50 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act, plus $1, whichever is greater.

(6)(A) Except as provided in subsection (h) of this section, beginning on July 1, 2017 and no later than July 1 of each successive year, the minimum wage provided in this subsection shall be increased in proportion to the annual average increase, if any, in the Consumer Price Index for All Urban Consumers in the Washington Metropolitan Statistical Area published by the Bureau of Labor Statistics of the United States Department of Labor for the previous calendar year. Any increase under this paragraph shall be adjusted to the nearest multiple of $.05.

(B) The Mayor shall publish in the District of Columbia Register and make available to employers a bulletin announcing the adjusted minimum wage rate as provided in this paragraph. The bulletin shall be published at least 30 days before the annual minimum wage rate adjustment.

(b) A person shall be employed in the District of Columbia when:

(1) The person regularly spends more than 50% of their working time in the District of Columbia; or

(2) The person's employment is based in the District of Columbia and the person regularly spends a substantial amount of their working time in the District of Columbia and not more than 50% of their working time in any particular state.

(c) No employer shall employ any employee for a workweek that is longer than 40 hours, unless the employee receives compensation for employment in excess of 40 hours at a rate not less than 1 ½ times the regular rate at which the employee is employed.

(d) All workers with disabilities shall be paid at a rate not less than the minimum wage, except in those instances where a certificate has been issued by the United States Department of Labor that authorizes the payment of less to workers with disabilities under § 214(c) of the Fair Labor Standards Act [29 U.S.C. § 214(c)].

(e) No employer shall be deemed to have violated subsection (c) of this section if the employee works for a retail or service establishment and:

(1) The regular rate of pay of the employee is in excess of 1½ times the minimum hourly rate applicable to the employee under this subchapter; and

(2) More than ½ of the employee's compensation for a representative period (not less than 1 month) represents commissions on goods or services.

(f) As of January 1, 2005, the minimum wage required to be paid by any employer in the District of Columbia to any employee who receives gratuities shall be $2.77 an hour, provided that the employee actually receives gratuities in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this section.

(g) Subsection (f) of this section shall not apply to an employee who receives gratuities unless:

(1) The employee has been informed by the employer of the provisions of subsection (f) of this section; and

(2) All gratuities received by the employee have been retained by the employee, except that this provision shall not be construed to prohibit the pooling of gratuities among employees who customarily receive gratuities.

(h) An employer shall pay a security officer working in an office building in the District of Columbia wages, or any combination of wages and benefits, that are not less than the combined amount of the minimum wage and fringe benefit rate for the guard 1 classification established by the United States Secretary of Labor pursuant to the Service Contract Act of 1965, approved October 22, 1965 (79 Stat. 1034; 41 U.S.C. § 351), as amended.

(Mar. 25, 1993, D.C. Law 9-248, § 4, 40 DCR 761; Apr. 8, 2005, D.C. Law 15-296, § 2, 52 DCR 1483; Apr. 24, 2007, D.C. Law 16-305, § 47, 53 DCR 6198; Mar. 20, 2008, D.C. Law 17-114, § 2(b), 55 DCR 1276; Mar. 11, 2014, D.C. Law 20-91, § 2(a), 61 DCR 778.)

Section references. — This section is referenced in § 4-205.19k, § 32-1002, § 32-1004, § 32-1006, and § 32-1607.

Effect of amendments.

The 2014 amendment by D.C. Law 20-91 added (a)(3), (a)(4), (a)(5) and (a)(6).

Legislative history of Law 20-91. — Law 20-91, the "Minimum Wage Amendment Act of 2013" was introduced in Council and assigned Bill No. 20-91. The Bill was adopted on first and second readings on December 3, 2013, and December 17, 2013, respectively. Signed by the Mayor on January 15, 2014, it was assigned Act No. 20-265 and transmitted to Congress for its review. D.C. Law 20-91 became effective on March 11, 2014.

CASE NOTES

ANALYSIS

Liquidated damages.
Weight and sufficiency of evidence.

Liquidated damages.

Employee was awarded liquidated damages in her action alleging that an employer violated the District of Columbia Minimum Wage Revision Act (DCWRA), D.C. Code § 32-1001 et seq., and the Fair Labor Standard Act (FLSA), 29 U.S.C.S. § 200 et seq., because the employee proved that she performed the work for which she was improperly compensated and the amount and extent of that work, and the employer failed to demonstrate good faith under the DCWRA, D.C. Code § 32-1012(a), and FLSA, 29 U.S.C.S. § 260; the employer's reliance on the opinion of an accounting firm as to his compliance was suspect. Romero v. Solloso, 2013 D.C. Super. LEXIS 1 (Jan. 15, 2013).

Weight and sufficiency of evidence.

Employee was awarded compensatory damages in her action alleging that an employer violated the District of Columbia Minimum Wage Revision Act, D.C. Code § 32-1001 et seq., and the Fair Labor Standard Act, 29 U.S.C.S. § 200 et seq., because the employee met her initial burden of proving that she performed the work for which she was improperly compensated and the amount and extent of that work; the employer presented no credible evidence rebutting the schedule as articulated by the employee. Romero v. Solloso, 2013 D.C. Super. LEXIS 1 (Jan. 15, 2013).

§ 32-1004. Exceptions.

(a) The minimum wage and overtime provisions of § 32-1003 shall not apply with respect to:

(1) Any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as these terms are defined by the Secretary of Labor under 201 et seq. of the Fair Labor Standards Act); or

(2) Any employee engaged in the delivery of newspapers to the home of the consumer.

(b) The overtime provisions of § 32-1003(c) shall not apply with respect to:

(1) Any employee employed as a seaman;

(2) Any employee employed by a railroad;

(3) Any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, or trucks, if employed by a nonmanufacturing establishment primarily engaged in the business of selling these vehicles to ultimate purchasers;

(4) Repealed.

(5) Any employee employed as an attendant at a parking lot or parking garage; or

(6) Any employee employed by a carrier by air who voluntarily exchanges workdays with another employee for the primary purpose of utilizing air travel benefits available to these employees.

(Mar. 25, 1993, D.C. Law 9-248, § 5, 40 DCR 761; May 31, 2012, D.C. Law 19-127, § 2, 59 DCR 2252.)

Section references. — This section is referenced in § 32-1015.

Effect of amendments. — D.C. Law 19-127 repealed subsec. (b)(4), which formerly read:

"(4) Any employee employed primarily to wash automobiles by an employer whose annual dollar volume of sales is derived by more than 50% from washing automobiles, and for the employee's employment in excess of 160 hours over a period of 4 consecutive workweeks, the employee receives compensation at a rate of 1 ½ times or more the regular rate at which he is employed;"

Legislative history of Law 19-127. — Law 19-127, the "Car Wash Employee Overtime Amendment Act of 2012", was introduced in Council and assigned Bill No. 19-247, which was referred to the Committee on Housing and Workforce Development. The Bill was adopted on first and second readings on February 7, 2012, and March 6, 2012, respectively. Signed by the Mayor on March 18, 2012, it was assigned Act No. 19-321 and transmitted to both Houses of Congress for its review. D.C. Law 19-127 became effective on May 31, 2012.

§ 32-1009. Posting of act and regulations on premises; distribution of copies to employers.

(a) Every employer who is subject to any provision of this subchapter or any regulation issued under this subchapter shall keep a copy or summary of this subchapter and any applicable regulation issued under this subchapter, in a form prescribed or approved by the Mayor, posted in a conspicuous and accessible place in or about the premises at which any employee covered by the regulation is employed.

(b) Employers shall be furnished copies or summaries of this subchapter by the Mayor on request without charge.

(Mar. 25, 1993, D.C. Law 9-248, § 10, 40 DCR 761; Mar. 11, 2014, D.C. Law 20-91, § 2(b), 61 DCR 778.)

Section references. — This section is referenced in § 32-1010.

Legislative history of Law 20-91. — See note to § 32-1003.

Editor's notes. — Section 2(b) of D.C. Law 20-91 would have amended (b) by deleting "on request".

Applicability of D.C. Law 20-79: Section 3 of D.C. Law 20-91 provided that sections 2(b)-(d) of the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-1009.01. Notice requirements for tipped wages.

[Not funded].

(Mar. 25, 1993, D.C. Law 9-248, § 10a, as added Mar. 11, 2014, D.C. Law 20-91, § 2(c), 61 DCR 778.)

Legislative history of Law 20-91. — See note to § 32-1003.

Editor's notes. — Section 2(c) of D.C. Law 20-91 would have added D.C. Law 9-248, § 10a, to read as follows:

"Sec. 10a. Notice requirements for tipped wages.

"(a) An employer who employs an employee who is paid in accordance with section 4(f) shall submit a quarterly wage report within 30 days of the end of each quarter to the Mayor certifying that the employee was paid the required minimum wage.

"(b)(1) The Mayor shall create an Internet-based portal for online reporting of the quarterly wage reports required by subsection (a) of this section.

"(2) An employer shall submit its quarterly wage reports online unless the employer claims that online reporting creates a hardship, in which case the employer shall submit its reports in hard-copy form.

"(3) The Mayor shall provide reporting requirements training to educate employers about the reporting requirements and use of the Internet-based portal.

"(c) The Mayor shall:

"(1) Perform random reporting audits after each quarterly report deadline to ensure compliance; and

"(2) Submit an annual report to the Secretary to the Council of the compliance data collected.".

Applicability of D.C. Law 20-79: Section 3 of D.C. Law 20-91 provided that sections 2(b)-(d) of the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-1010. Violations.

It shall be unlawful for any employer to:

(1) Violate any of the provisions of this subchapter or any of the provisions of any regulation issued under this subchapter;

(2) Violate any of the provisions of §§ 32-1008 and 32-1009 or any regulation made under the provisions of § 32-1006, or to make any statement, report, or record filed or kept pursuant to the provisions of § 32-1008 or any regulation or order issued under § 32-1006 knowing the statement, report, or record to be false in a material respect;

(3) Discharge or in any other manner discriminate against any employee because that employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this subchapter or has testified or is about to testify in any proceeding; or

(4) Hinder or delay the Mayor or the Mayor's authorized representative in the enforcement of this subchapter, to refuse to admit the Mayor or the Mayor's authorized representative to any place of employment upon demand, to refuse to make available any record to the Mayor or Mayor's authorized agent required to be made, kept, or preserved under this subchapter, or to fail to post a summary or copy of this subchapter or of any applicable regulation or order, as required under § 32-1009.

(Mar. 25, 1993, D.C. Law 9-248, § 11, 40 DCR 761; Mar. 11, 2014, D.C. Law 20-91, § 2(d), 61 DCR 778.)

Section references. — This section is referenced in § 32-1011.

Legislative history of Law 20-91. — See note to § 32-1003.

Editor's notes. — Section 2(d) of D.C. Law 20-91 would have amended (2) by striking the phrase "sections 9 and 10" and inserting the phrase "sections 9, 10, and 10a" in its place, and striking the phrase "section 9" and insert the phrase "sections 9 and 10a" in its place.

Applicability of D.C. Law 20-79: Section 3 of D.C. Law 20-91 provided that sections 2(b)-(d) of the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-1011. Penalties; prosecution.

(a) Any person who willfully violates any of the provisions of § 32-1010 shall, upon conviction, be subject to a fine of not more than $10,000, or to imprisonment of not more than 6 months, or both.

(b) No person shall be imprisoned under this section except for an offense committed after the conviction of that person for a prior offense under this section.

(c) Prosecutions for violations of this subchapter shall be in the Superior Court of the District of Columbia and shall be conducted by the Corporation Counsel of the District of Columbia.

(d) In addition to and apart from the penalties or remedies provided for in this section or § 32-1012, the Mayor shall assess and collect administrative penalties up to a maximum of $300 for the first violation and up to a maximum of $500 for each subsequent violation. The Mayor shall consider factors that include the history of previous violations by the employer, the administrative costs of the proceeding to collect, and the size of the employer's business, when determining the penalty to be imposed. In addition, the Mayor may assess more than one administrative penalty against an employer for the same adversely affected employee if the employer has violated more than one statutory provision of this subchapter.

(e) No administrative penalty shall be collected unless the Mayor provides any person alleged to have violated a provision of § 32-1010 notification of the violation, notification of the amount of the administrative penalty to be imposed, and an opportunity to request an informal hearing. If an informal hearing is requested, the Mayor shall issue a final order following the hearing containing a finding that a violation has or has not occurred. If an informal hearing is not requested, the person to whom notification of violation was provided shall transmit to the Mayor the amount of the penalty within 15 days following notification.

(f) The fine set forth in this section shall not be limited by § 22-3571.01.

(Mar. 25, 1993, D.C. Law 9-248, § 12, 40 DCR 761; Apr. 3, 2001, D.C. Law 13-245, § 2, 48 DCR 647; June 11, 2013, D.C. Law 19-317, § 112(d), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (f).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 112(d) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality

Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 32-1012. Civil liability.

(a) Any employer who pays any employee less than the wage to which that employee is entitled under this subchapter shall be liable to that employee in the amount of the unpaid wages, and an additional amount as liquidated damages, except that if, in any action commenced to recover unpaid wages or liquidated damages, the employer shows to the satisfaction of the court that the act or omission that gave rise to the action was in good faith and that the employer had reasonable grounds for the belief that the act or omission was not a violation of this subchapter, the court may award no liquidated damages, or award any amount not to exceed the amount specified in this section.

(b) Action to recover damages sued for under this subchapter may be maintained in any court of competent jurisdiction in the District of Columbia by any 1 or more employees for and on behalf of the employee and other employees who are similarly situated. No employee shall be a party plaintiff to any action brought under this subchapter unless the employee gives written consent to become a party and the written consent is filed in the court in which the action is brought.

(c) The court in which the action is brought shall allow for reasonable attorney's fees and costs of the action to be paid by the defendant to the prevailing party.

(d) Any agreement between an employer and employee in which the employee agrees to work for less than the wages to which the employee is entitled under this subchapter or any regulation issued under this subchapter shall be no defense to any action to recover unpaid wages or liquidated damages.

(e) At the written request of any employee who is paid less than the employee is entitled under this subchapter or any regulation issued under this subchapter, the Mayor may take an assignment of the wage claim in trust for the assigning employee and may bring any legal action necessary to collect the claim. In an action of this type, the defendant shall be required to pay the costs and reasonable attorney's fees as may be allowed by the court.

(f) The Mayor is authorized to supervise the payment of unpaid wages and liquidated damages owed to any employee under this subchapter or any regulation issued under this subchapter, and the agreement of any employee to accept this payment, shall upon full payment, constitute a waiver by the employee of any right the employee may have under subsection (a) of this section to any unpaid wages, and an additional equal amount as liquidated damages.

(Mar. 25, 1993, D.C. Law 9-248, § 13, 40 DCR 761; Dec. 24, 2013, D.C. Law 20-61, § 2063, 60 DCR 12472.)

Section references. — This section is referenced in § 32-1011.

Effect of amendments. — The 2013 amendment by D.C. Law 20-61 substituted "wages and liquidated damages owed" for "wages owed" in (f).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 2063 of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) amendment of this section, see § 2063 of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 20-61. — Law 20-61, the "Fiscal Year 2014 Budget Support Act of 2013," was introduced in Council and assigned Bill No. 20-199. The Bill was adopted on first and second readings on May 22, 2013, and June 26, 2013, respectively. Signed by the Mayor on Aug. 28, 2013, it was assigned Act No. 20-157 and transmitted to Congress for its review. D.C. Law 20-61 became effective on Dec. 24, 2013.

Short title. — Section 2061 of D.C. Law 20-61 provided that Subtitle G of Title II of the act may be cited as the "Wage Theft Prevention Amendment Act of 2013".

Editor's notes. — Applicability of D.C. Law 20-61: Section 11001 of D.C. Law 20-61 provided that, except as otherwise provided, the act shall apply as of October 1, 2013.

CASE NOTES

Damages.

Employee who was entitled to $144.50 in unpaid overtime and liquidated damages pursuant to FLSA, could not collect twice for the same unpaid overtime compensation even though employer's failure to pay also constituted violation of District of Columbia Minimum Wage Act Revision Act (DCMWA). Encinas v. J.J. Drywall Corp., 840 F.Supp.2d 6, 2012 U.S. Dist. LEXIS 276 (2012).

Employer who had unlawfully deducted 10% of gross wages paid to its drywall employees, in violation of District of Columbia Wage Payment and Wage Collection Law (DCWPCL), and who had failed to maintain any employee payroll records, was liable for damages in the amount of $39,024 total in unlawful wage deductions, under theory of unjust enrichment, based on average number of employees working on jobsite, the duration of their work, and employees' promised hourly wages. Encinas v. J.J. Drywall Corp., 840 F.Supp.2d 6, 2012 U.S. Dist. LEXIS 276 (2012).

Employee was awarded liquidated damages in her action alleging that an employer violated the District of Columbia Minimum Wage Revision Act (DCWRA), D.C. Code § 32-1001 et seq., and the Fair Labor Standard Act (FLSA), 29 U.S.C.S. § 200 et seq., because the employee proved that she performed the work for which she was improperly compensated and the amount and extent of that work, and the employer failed to demonstrate good faith under the DCWRA, D.C. Code § 32-1012(a), and FLSA, 29 U.S.C.S. § 260; the employer's reliance on the opinion of an accounting firm as to his compliance was suspect. Romero v. Solloso, 2013 D.C. Super. LEXIS 1 (Jan. 15, 2013).

CHAPTER 13. WAGES AND WORKPLACE FRAUD.

Subchapter I. Payment and Collection of Wages

Sec.
32-1301. Definitions.
32-1303. Payment of wages upon discharge or resignation of employee and upon suspension of work; employer's liability for failure to make such payment.
32-1305. Provisions of law may not be waived.
32-1306. Enforcement, records and subpoenas.
32-1307. Penalties.

Subchapter II. Workplace Fraud

Sec.
32-1331.01. Definitions.
32-1331.02. Application.
32-1331.03. Deemed employers.
32-1331.04. Workplace fraud prohibited.
32-1331.05. Investigation of complaints.
32-1331.06. Hearings.
32-1331.07. Penalties.
32-1331.08. Provisions of law may not be waived by agreement.
32-1331.09. Private right of action.
32-1331.10. Retaliation prohibited.
32-1331.11. Provisions relating to contracts with public bodies.
32-1331.12. Employer record-keeping requirements.
32-1331.13. Further acts prohibited; penalty.
32-1331.14. Rules.
32-1331.15. Workplace Fraud Fund.

Subchapter I. Payment and Collection of Wages.

§ 32-1301. Definitions.

Whenever used in this chapter:

(1) "Employer" includes every individual, partnership, firm, association, corporation, the legal representative of a deceased individual, or the receiver, trustee, or successor of an individual, firm, partnership, association, or corporation, employing any person in the District of Columbia; provided, that the word "employer" shall not include the government of the United States, the government of the District of Columbia, or any agency of either of said governments, or any employer subject to the Railway Labor Act (45 U.S.C. § 151 et seq.).

(2) "Employee" shall include any person suffered or permitted to work by an employer except any person employed in a bona fide executive, administrative, or professional capacity (as such terms are defined and delimited by regulations promulgated by the Council of the District of Columbia).

(3) "Wages" means all monetary compensation after lawful deductions, owed by an employer, whether the amount owed is determined on a time, task, piece, commission, or other basis of calculation. The term "wages" includes a:

(A) Bonus;

(B) Commission;

(C) Fringe benefits paid in cash;

(D) Overtime premium; and

(E) Other remuneration promised or owed:

(i) Pursuant to a contract for employment, whether written or oral;

(ii) Pursuant to a contract between an employer and another person or entity; or

(iii) Pursuant to District or federal law.

(4) "Mayor" means the Mayor of the District of Columbia or his designated agent or agents.

(5) "Working day" means any day exclusive of Saturdays, Sundays, or legal holidays.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 1; Dec. 24, 2013, D.C. Law 20-61, § 2062(a), 60 DCR 12472.)

Section references. — This section is referenced in § 2-220.08.

Effect of amendments. — The 2013 amendment by D.C. Law 20-61 rewrote (3).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 2062(a) of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) amendment of this section, see § 2062(a) of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 20-61. — Law 20-61, the "Fiscal Year 2014 Budget Support Act of 2013," was introduced in Council and assigned Bill No. 20-199. The Bill was adopted on first and second readings on May 22, 2013, and June 26, 2013, respectively. Signed by the Mayor on Aug. 28, 2013, it was assigned Act No. 20-157 and transmitted to Congress for its review. D.C. Law 20-61 became effective on Dec. 24, 2013.

Short title. — Section 2061 of D.C. Law 20-61 provided that Subtitle G of Title II of the act may be cited as the "Wage Theft Prevention Amendment Act of 2013".

Editor's notes. — Section 2(a) of D.C. Law

19-300 designated the existing provisions of Chapter 13 as subchapter I, and enacted subchapter II.

Applicability of D.C. Law 20-61: Section 11001 of D.C. Law 20-61 provided that, except as otherwise provided, the act shall apply as of October 1, 2013.

§ 32-1303. Payment of wages upon discharge or resignation of employee and upon suspension of work; employer's liability for failure to make such payment.

Unless otherwise specified in a collective agreement between an employer and a bona fide union representing his employees:

(1) Whenever an employer discharges an employee, the employer shall pay the employee's wages earned not later than the working day following such discharge; provided, however, that in the instance of an employee who is responsible for monies belonging to the employer, the employer shall be allowed a period of 4 days from the date of discharge or resignation for the determination of the accuracy of the employee's accounts, at the end of which time all wages earned by the employee shall be paid.

(2) Whenever an employee (not having a written contract of employment for a period in excess of 30 days) quits or resigns, the employer shall pay the employee's wages due upon the next regular payday or within 7 days from the date of quitting or resigning, whichever is earlier.

(3) When work of an employee is suspended as a result of a labor dispute, the employer shall pay to such employee not later than the next regular payday, designated under § 32-1302, wages earned at the time of suspension.

(4) If an employer fails to pay an employee wages earned as required under paragraphs (1), (2), and (3) of this section, such employer shall pay, or be additionally liable to, the employee, as liquidated damages, 10 per centum of the unpaid wages for each working day during which such failure shall continue after the day upon which payment is hereunder required, or an amount equal to treble the unpaid wages, whichever is smaller; provided, however, that for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he thereafter shall have been adjudicated bankrupt upon such petition.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 3; Dec. 24, 2013, D.C. Law 20-61, § 2062(b), 60 DCR 12472.)

Section references. — This section is referenced in § 32-1304.

Effect of amendments. — The 2013 amendment by D.C. Law 20-61 substituted "equal to treble the unpaid wages" for "equal to the unpaid wages" in (4).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 2062(b) of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) amendment of this section, see § 2062(b) of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 20-61. — See note to § 32-1301.

Short title. — Section 2061 of D.C. Law 20-61 provided that Subtitle G of Title II of the act may be cited as the "Wage Theft Prevention Amendment Act of 2013".

Editor's notes. — Applicability of D.C. Law

20-61: Section 11001 of D.C. Law 20-61 provided that, except as otherwise provided, the act shall apply as of October 1, 2013.

§ 32-1305. Provisions of law may not be waived.

(a) Except as herein provided, no provision of this chapter shall in any way be contravened or set aside by private agreement.

(b) In enforcing the provisions of this chapter, the remuneration promised by an employer to an employee shall be presumed to be at least the amount required by federal law, including federal law requiring the payment of prevailing wages, or by District law.

(Aug. 3, 1956, 70 Stat. 977, ch. 924, § 5; Dec. 24, 2013, D.C. Law 20-61, § 2062(c), 60 DCR 12472.)

Effect of amendments. — The 2013 amendment by D.C. Law 20-61 added (b).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 2062(c) of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) amendment of this section, see § 2062(c) of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 20-61. — See note to § 32-1301.

Short title. — Section 2061 of D.C. Law 20-61 provided that Subtitle G of Title II of the act may be cited as the "Wage Theft Prevention Amendment Act of 2013".

Editor's notes. — Applicability of D.C. Law 20-61: Section 11001 of D.C. Law 20-61 provided that, except as otherwise provided, the act shall apply as of October 1, 2013.

§ 32-1306. Enforcement, records and subpoenas.

(a) The Mayor shall enforce and administer the provisions of this chapter and may hold hearings and otherwise investigate any violations of this chapter and institute actions for the payment of wages, liquidated damages, and penalties provided hereunder. Any and all prosecutions of violations of this chapter shall be conducted in the name of the District of Columbia and by the Corporation Counsel or his assistants. The Mayor shall inform any employee affected by a prosecution brought under this section of the proceedings of the prosecution and shall consult with the employee concerning appropriate restitution and damages.

(b) The Mayor shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony and to take depositions and affidavits in any proceedings before him.

(c) In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the Superior Court of the District of Columbia or any judge thereof, on application by the Mayor, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such Court or a refusal to testify therein.

(Aug. 3, 1956, 70 Stat. 977, ch. 924, § 6; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Dec. 24, 2013, D.C. Law 20-61, § 2062(d), 60 DCR 12472.)

Effect of amendments. — The 2013 amendment by D.C. Law 20-61, in (a), substituted "for the payment of wages, liquidated damages, and penalties" for "for penalties" and added the last sentence.

Emergency legislation. — For temporary (90 days) amendment of this section, see § 2062(d) of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) amendment of this section, see § 2062(d) of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 20-61. — See note to § 32-1301.

Short title. — Section 2061 of D.C. Law 20-61 provided that Subtitle G of Title II of the act may be cited as the "Wage Theft Prevention Amendment Act of 2013".

Editor's notes. — Applicability of D.C. Law 20-61: Section 11001 of D.C. Law 20-61 provided that, except as otherwise provided, the act shall apply as of October 1, 2013.

§ 32-1307. Penalties.

(a) Any employer who, having the ability to pay, willfully violates any provisions of § 32-1302 or § 32-1304 or who fails to comply with any other provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall for the 1st offense be punished by a fine of not more than $300, or by imprisonment of not more than 30 days, or in the discretion of the court, by both such fine and imprisonment; and for any subsequent offense shall be punished by a fine of not more than $1,000 or by imprisonment of not more than 90 days, or in the discretion of the court, by both such fine and imprisonment.

(b) In addition to and apart from any other penalties or remedies provided for in this chapter, the Mayor shall assess and collect administrative penalties up to a maximum of $300 for the first violation and up to a maximum of $500 for each subsequent violation. The Mayor shall consider factors that include the history of previous violations by the employer, the administrative costs of the proceeding to collect, and the size of the employer's business, when determining the penalty to be imposed. In addition, the Mayor may assess more than one administrative penalty against an employer for the same adversely affected employee if the employer has violated more than one statutory provision of this chapter.

(c) No administrative penalty may be collected unless the Mayor provides any person alleged to have violated any of the provisions of this section notification of the violation, notification of the amount of the administrative penalty to be imposed, and an opportunity to request an informal hearing. If a formal hearing is requested, the Mayor shall issue a final order following the hearing, containing a finding that a violation has or has not occurred. If an informal hearing is not requested, the person to whom notification of violation was provided shall transmit to the Mayor the amount of the penalty within 15 days following notification.

(d) The fines set forth in this section shall not be limited by § 22-3571.01.

(Aug. 3, 1956, 70 Stat. 978, ch. 924, § 7; Apr. 3, 2001, D.C. Law 13-245, § 3, 48 DCR 647; June 11, 2013, D.C. Law 19-317, § 112(e), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (d).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 112(e) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 32-1308. Employees' remedies.

CASE NOTES

Costs and attorney fees.

Under District of Columbia law, former employee's refusal of employer's offer of judgment on her claim for unpaid leave under Wage Payment Act and Collection Law did not bar her claim for attorney fees and costs, where offer of judgment was in the amount of "$173.46 for liquidated damages, costs, and attorney fees," and employee recovered $173.46 for unpaid leave, "without prejudice to the parties' arguments on attorney fees." Dorsey v. Jacobson Holman, PLLC, 851 F.Supp.2d 13, 2012 U.S. Dist. LEXIS 44140 (2012), affirmed by 2012 U.S. App. LEXIS 16406 (D.C. Cir. Aug. 7, 2012).

Subchapter II. Workplace Fraud.

§ 32-1331.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Construction services" includes, without limitation, all building or work on buildings, structures, and improvements of all types such as bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, pumping stations, heaving generators, railways, airports, terminals, docks, piers, wharves, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing and landscaping. The term "construction services" shall also include moving construction-related materials on the job site.

(2) "Employee" means every person, other than an exempt person or an independent contractor, providing construction services to another person.

(3) "Employer" means any individual, partnership, firm, association, joint stock company, trust, limited liability company, corporation, the administrator or executor of the estate of a deceased individual or the receiver, trustee, or successor of any of the same, or any other legal entity permitted to do business within the District of Columbia employing a person to provide services, or any person or group of persons acting directly or indirectly in the interest of an employer.

(4) "Exempt person" means an individual who:

(A)(i) Performs services in a personal capacity and who employs no individuals other than a spouse, child, or immediate family member of the individual; or

(ii) Performs services free from direction and control over the means

and manner of providing the services, subject only to the right of the person or entity for whom services are provided to specify the desired result;

(B) Furnishes the tools and equipment necessary to provide the service; and

(C) Operates a business that is considered inseparable from the individual for purposes of taxes, profits, and liabilities, in which the individual exercises complete control over the management and operations of the business.

(5) "Interested party" means a person with an interest in compliance with this subchapter.

(6) "Knowingly" means having actual knowledge of, or acting with deliberate ignorance or reckless disregard for, the prohibition involved.

(7) "Mayor" mean the Mayor of the District of Columbia or his or her designated agent or agents.

(8) "Stop work order" means written notice from the Mayor to an employer to cease or hold work until the employer is given notice by the Mayor to resume work.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 201, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Section references. — This section is referenced in § 2-359.07.

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this subchapter.

Legislative history of Law 19-300 — Law 19-300, the "Workplace Fraud Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Returned without the Mayor's signature on Feb. 11, 2013, it was assigned Act No. 19-668 and transmitted to both Houses of Congress for its review. D.C. Law 19-300 became effective on Apr. 27, 2013.

§ 32-1331.02. Application.

This subchapter shall apply only to the construction services industry.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 202, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.03. Deemed employers.

For the purposes of this subchapter, the officers of a corporation and any agents having the management thereof who knowingly permit the corporation to violate this subchapter shall be deemed to be the employers of the employees of the corporation.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 203, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.04. Workplace fraud prohibited.

(a) An employer shall not improperly classify an individual who performs services for remuneration paid by an employer as an independent contractor.

(b) An employer has improperly classified an individual when an employer-employee relationship exists, as determined by subsection (c) of this section, but the employer has not classified the individual as an employee.

(c) An employer-employee relationship shall be presumed to exist when work is performed by an individual for remuneration paid by an employer, unless to the satisfaction of the Mayor, the employer demonstrates that:

(1) The individual is an exempt person; or

(2)(A) The individual who performs the work is free from control and direction over the performance of services, subject only to the right of the person or entity for whom services are provided to specify the desired result;

(B) The individual is customarily engaged in an independently established trade, occupation, profession, or business; and

(C) The work is outside of the usual course of business of the employer for whom the work is performed.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 204, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.05. Investigation of complaints.

(a) The Mayor, pursuant to a complaint from an employee, a representative of an employee, an interested party, or on his or her own initiative, shall investigate violations of this subchapter.

(b) The Mayor may:

(1) Enter and inspect the premises or place of business, employment, or work site, and upon demand examine and copy, wholly or partly, any or all books, registers, payrolls, and other records, including those required to be made, kept, and preserved under this subchapter or under any regulation issued pursuant to this subchapter;

(2) Question an employer, employee, or other person in the premises, place of business or employment, or work site;

(3) Require from any employer full and correct statements in writing, including sworn statements, upon forms prescribed or approved by the Mayor, with respect to the payment of wages, hours, names, addresses, and such other information pertaining to remuneration to employees or independent contractors as the Mayor may determine necessary or appropriate; and

(4) Investigate such facts, conditions, or matters as the Mayor may determine necessary or appropriate to determine whether this subchapter or

any regulation issued pursuant to this subchapter has been or is being violated.

(c)(1) The Mayor, in the performance of any duty or the execution of any power prescribed by this subchapter, may administer oaths or affirmations, hold hearings, certify official acts, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance of witnesses and production of books, papers, documents, records, and testimony.

(2) In case of failure of any person to comply with a lawful subpoena or of the refusal of any witness to produce evidence or to testify to any matter about which he or she may be lawfully interrogated, the Superior Court of the District of Columbia, upon the application of the Mayor or the Mayor's designee, may compel obedience by proceedings for contempt as provided in § 2-1831.09(e).

(d) An employer that fails to produce to the Mayor the books and records requested in the course of an investigation to determine whether the employer is in compliance with the provisions of this subchapter shall be subject to an administrative penalty not to exceed $500 per day for each day the requested records are not produced.

(e) Nothing contained in this subchapter shall be deemed a limitation on any power or authority of the Mayor under any law which may be otherwise applicable to administer or enforce this subchapter.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 205, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Emergency legislation. — For temporary (90 days) repeal of D.C. Law 19-300, § 4, see § 7019 of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) repeal of D.C. Law 19-300, § 4, see 7019 of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 19-300. — See note to § 32-1331.01.

Short title. — Section 7001 of D.C. Law 20-61 provided that Subtitle A of Title VII of the act may be cited as the "Subject to Appropriations Repealers Amendment Act of 2013".

Editor's notes. — Section 4 of D.C. Law 19-300 provided that D.C. Law 19-300, §§ 205, 206, and 212(e) shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Section 7019 of D.C. Law 20-61 repealed D.C. Law 19-300, § 4.

§ 32-1331.06. Hearings.

(a)(1) Within 15 days after service of notice of a violation, an alleged violator may submit a written request to the Mayor to hold a hearing on the alleged violation.

(2) Upon receipt of a timely request, the Mayor shall conduct a hearing in accordance with the procedures set forth in subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], and issue a decision within 30 days after the hearing.

(b) If the Mayor, after investigation but before a hearing, has cause to believe that a person is violating any provision of this subchapter and the violation has caused, or may cause, immediate and irreparable harm to the

public, the Mayor may issue a stop work order requiring the alleged violator to immediately cease and desist construction-related business activities. The order shall be served by certified mail or delivery in person.

(c)(1) Within 10 days after service of a stop work order, the alleged violator may submit a written request to the Mayor for an expedited hearing on the alleged violation.

(2) Upon receipt of a timely request for an expedited hearing, the Mayor shall conduct a hearing within 10 days after the date of receiving the request and shall deliver to the alleged violator at his or her last known address a written notice of the hearing by any means guaranteed to be received at least 5 days before the hearing date.

(3) The Mayor shall issue a decision within 10 days after an expedited hearing.

(d) Any party aggrieved by a final order of the Mayor under subsection (c)(3) of this section may seek judicial review and appeal under § 2-510.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 206, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Emergency legislation. — For temporary (90 days) repeal of D.C. Law 19-300, § 4, see § 7019 of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) repeal of D.C. Law 19-300, § 4, see 7019 of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 19-300. — See note to § 32-1331.01.

Editor's notes. — Section 4 of D.C. Law 19-300 provided that D.C. Law 19-300, §§ 205, 206, and 212(e) shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Section 7019 of D.C. Law 20-61 repealed D.C. Law 19-300, § 4.

Short title. — Section 7001 of D.C. Law 20-61 provided that Subtitle A of Title VII of the act may be cited as the "Subject to Appropriations Repealers Amendment Act of 2013".

§ 32-1331.07. Penalties.

(a) Any employer who violates or fails to comply with the requirements of this subchapter shall be subject to a civil penalty of not less than $1,000, and not more than $5,000, for each violation. Each employee who is not properly classified in violation of this subchapter shall be considered a separate violation.

(b) An employer who violates § 32-1331.10 shall be subject to a civil penalty of not less than $5,000, and not more than $10,000, for each such violation.

(c) In addition to the penalties provided in subsections (a) and (b) of this section, an employer may be subject to a stop work order, and may be ordered to make restitution, pay any interest due, and otherwise comply with all applicable laws and regulations.

(d) Within 30 days of the final order, an employer found in violation of this subchapter shall be required to:

(1) Pay restitution to or on behalf of any individual not properly classified; and

(2) Otherwise come into compliance with all applicable labor laws, including those related to income tax withholding, unemployment insurance, wage and hour laws, and workers' compensation.

(e) Notwithstanding subsections (a) and (b) of this section, an employer who has been found to have violated this subchapter more than twice in a 2-year period:

(1) Shall have the choice of being assessed an administrative penalty of $20,000 for each employee that was not properly classified, or be debarred for 5 years; and

(2) If an employer is debarred pursuant to paragraph (1) of this subsection, the employer shall be subject to a civil penalty of not less than $5,000, and not more than $10,000, for each employee that was not properly classified, and may be ordered to make restitution, pay any interest due, and otherwise comply with all applicable laws and regulations.

(f) Any penalty issued under this section against an employer shall be in effect against any successor corporation or business entity that:

(1) Has one or more of the same principals or officers as the employer against whom the penalty was assessed; and

(2) Is engaged in the same or equivalent trade or activity.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 207, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.08. Provisions of law may not be waived by agreement.

No provision of this subchapter may in any way be contravened or set aside by private agreement. Any agreement between an employer and employee in which the employee, despite not being an exempt person, agrees to be classified as an independent contractor shall be no defense to any action to recover unpaid wages or liquidated damages.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 208, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.09. Private right of action.

(a) A person aggrieved by a violation of this subchapter, or any rule issued pursuant to this subchapter, by an employer or entity may bring a civil action in any court of competent jurisdiction within 3 years after the occurrence of the alleged violation of [this] subchapter. A person whose rights have been violated under this subchapter by an employer or entity is entitled to collect:

(1) The amount of any wages, salary, employment benefits, or other

compensation denied or lost to the person by reason of the violation, plus an additional equal amount in liquidated damages;

(2) Compensatory damages and an amount up to $500 for each violation of this subchapter or any rule issued pursuant to this subchapter; and

(3) In the case of unlawful retaliation, all legal or equitable relief as may be appropriate.

(b) A court may order the following:

(1) Reinstatement and the payment of back wages;

(2) Fringe benefits;

(3) Seniority rights;

(4) Treble damages for lost wages or benefits; or

(5) Any combination of the remedies set forth in paragraphs (1) through (4) of this subsection.

(c) The court shall allow for reasonable attorneys fees and costs of the action to be paid by the defendant.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 209, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Section references. — This section is referenced in § 32-1331.11.

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.10. Retaliation prohibited.

(a) An employer may not discriminate in any manner or take adverse action against any person because the person:

(1) Makes an oral or written complaint with the employer or the Mayor alleging that the employer violated any provision of this subchapter or any rule issue pursuant to this subchapter;

(2) Brings an action or initiates a proceeding involving a violation of this subchapter;

(3) Testifies in an action authorized under this subchapter or a proceeding involving a violation of the provisions of this subchapter or any rule issued pursuant to this subchapter; or

(4) Assists in an investigation by providing information to a litigant in a civil action, the Mayor, or another agency in proceedings as provided by [this] subchapter.

(b)(1) A person who believes that an employer has discriminated in any manner or taken adverse action against the person in violation of this subchapter may submit to the Mayor a written complaint, signed by the complainant, that alleges the discrimination.

(2) Upon receipt of a complaint, the Mayor shall conduct an investigation.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 210, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Section references. — This section is referenced in § 32-1331.07.

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.11. Provisions relating to contracts with public bodies.

(a) Where, after investigation, the Mayor determines that an employer who is or has engaged in work on a project funded by District funds is in violation of this subchapter, the Mayor shall:

(1) Withhold from payment due to the employer an amount that is sufficient to:

(A) Pay restitution to each employee according to § 32-1331.09, including any applicable prevailing wages; and

(B) Pay any benefits, taxes, or other contributions that are required by law to be paid on behalf of the employee.

(2) Upon a final determination, the Mayor shall release the full amount of the withheld funds if no violation is found, or if a violation is found, the balance of the withheld funds after all obligations are satisfied pursuant to paragraph (1) of this subsection.

(b) An employer found to be in violation of this section more than twice in a 2-year period shall be subject to debarment. A debarment under this section shall be in effect against any successor corporation or business entity that:

(1) Has one or more of the same principals or officers as the employer against whom the debarment was imposed; and

(2) Is engaged in the same or equivalent trade or activity.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 211, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.12. Employer record-keeping requirements.

(a) An employer shall keep, for at least 3 years, in or about its place of business, records of the employer containing the following information:

(1) The name, address, occupation, and classification of each employee, exempt person, or independent contractor;

(2) The rate of pay of each employee or method of payment for the independent contractor or exempt person;

(3) The classification of each individual as an employee, exempt person, or an independent contractor;

(4) The amount that is paid each pay period to each employee, exempt person, or independent contractor;

(5) The hours that each employee, exempt person, or independent contractor works each day and each work week;

(6) For all individuals who are not classified as employees, evidence that each individual is an exempt person or an independent contractor or an employee thereof; and

(7) Other information that the Mayor requires, by regulation, as necessary to enforce this subchapter.

(b)(1) An employer shall provide each individual classified as an independent contractor or exempt person with written notice of such classification at the time the individual is hired.

(2) The written notice shall include:

(A) An explanation of the implications of the individual's classification as an independent contractor or exempt person rather than as an employee, in compliance with § 2-1933, and

(B) Contact information for the Mayor.

(3) Failure to provide a written notice shall be evidence of a knowing violation. The employer shall be liable for an administrative penalty of $500 for each individual that the employer failed to notify.

(4) The Mayor shall adopt regulations establishing specific requirements for the content and form of the notice within 180 days of April 27, 2013, and, the adoption of such regulations shall be a prerequisite to the obligation to furnish the notice.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 212, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Emergency legislation. — For temporary (90 days) repeal of D.C. Law 19-300, § 4, see § 7019 of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) repeal of D.C. Law 19-300, § 4, see 7019 of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 19-300. — See note to § 32-1331.01.

Short title. — Section 7001 of D.C. Law 20-61 provided that Subtitle A of Title VII of the act may be cited as the "Subject to Appropriations Repealers Amendment Act of 2013".

Editor's notes. — Section 4 of D.C. Law 19-300 provided that D.C. Law 19-300, §§ 205, 206, and 212(e) [212(b)(4)] shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Section 7019 of D.C. Law 20-61 repealed D.C. Law 19-300, § 4.

§ 32-1331.13. Further acts prohibited; penalty.

(a) A person who knowingly incorporates or forms, or assists in the incorporation or formation of, a corporation, partnership, limited liability company, or other entity, or pays or collects a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity for the purpose of facilitating, or evading detection of, a violation of this subchapter shall be subject to a civil penalty not less than $5,000 and not to exceed $20,000.

(b) A person who knowingly conspires with, aids and abets, assists, advises, or facilitates, an employer with the intent of violating this subchapter shall be subject to a civil penalty not less than $5,000 and not to exceed $20,000.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 213, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.14. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 30-day review period, the proposed rules shall be deemed approved.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 214, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.15. Workplace Fraud Fund.

There is established as a nonlapsing fund the Workplace Fraud Fund ("Fund"). Each civil penalty collected pursuant to this subchapter shall be paid into the Fund to partially offset the administration, investigation, and other expenses incurred in implementing this subchapter. All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of the fiscal year, or at any other time, but shall be continually available for the administration of this subchapter without regard to fiscal year limitation, subject to authorization of Congress.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 215, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

CHAPTER 13C. PROHIBITION ON DISCRIMINATION AGAINST THE UNEMPLOYED.

Sec.
32-1361. Definitions.
32-1362. Discrimination based on status as unemployed unlawful.
32-1363. Retaliation unlawful.
32-1364. Exemptions.
32-1365. Oversight.
32-1366. Civil penalties.
32-1367. Rules.

Sec.
32-1368. Applicability of chapter.

§ 32-1361. Definitions.

For the purposes of this chapter, the term:

(1) "Employee" means any individual employed by an employer.

(2) "Employer" means any person who employs or seeks to employ for compensation one or more individuals for a position in the District (but not including the person's parent, spouse, child, or domestic servant engaged in work in and about the employer's household). The term "employer" includes any person acting in the interest of the person, directly or indirectly.

(3) "Employment agency" means any person regularly undertaking or attempting, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of that person.

(4) "Potential employee" means any individual who has applied to an employer for a vacant position to gain employment.

(5) "Status as unemployed" means any individual who, at the time of applying for employment, or, who at the time an act alleged to violate this chapter occurs, does not have a job, is available for work, and is seeking employment.

(May 31, 2012, D.C. Law 19-132, § 2, 59 DCR 2391.)

Legislative history of Law 19-132. — Law 19-132, the "Unemployed Anti-Discrimination Act of 2012", was introduced in Council and assigned Bill No. 19-486, which was referred to the Committee on Aging and Community Affairs. The Bill was adopted on first and second readings on February 7, 2012, and March 6, 2012, respectively. Signed by the Mayor on March 19, 2012, it was assigned Act No. 19-329 and transmitted to both Houses of Congress for its review. D.C. Law 19-132 became effective on May 31, 2012.

§ 32-1362. Discrimination based on status as unemployed unlawful.

No employer or employment agency shall:

(1) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or

(2) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:

(A) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or

(B) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

(May 31, 2012, D.C. Law 19-132, § 3, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

§ 32-1363. Retaliation unlawful.

No employer or employment agency shall:

(1) Interfere with, restrain, or deny the exercise of, or the attempted exercise of, any right provided under this chapter; or

(2) Fail or refuse to hire, or discharge, any employee or potential employee because the employee or potential employee:

(A) Opposed any practice made unlawful by this chapter;

(B) Has filed any charge, or has instituted or caused to be instituted any proceeding, relating to any right provided under this chapter;

(C) Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or

(D) Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this chapter.

(May 31, 2012, D.C. Law 19-132, § 4, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

§ 32-1364. Exemptions.

(a) Nothing set forth in this chapter shall be construed as prohibiting an employer or employment agency from publishing, in print, on the Internet, or in any other medium, an advertisement for any job vacancy that contains any provision setting forth any other qualifications for a job, as permitted by law, including:

(1) The holding of a current and valid professional or occupational license;

(2) A certificate, registration, permit, or other credential; or

(3) A minimum level of education, training, or professional, occupational, or field experience.

(b) Nothing in this chapter is intended to preclude an employer or employment agency from examining the reasons underlying an individual's status as unemployed in assessing an individual's ability to perform a job or in otherwise making employment decisions about that individual.

(c) Nothing in this chapter shall be construed as prohibiting an employer or employment agency from publishing, in print, on the Internet, or in any other medium, an advertisement for any job vacancy that contains any provision stating that only applicants who are currently employed by the employer will be considered for employment.

(May 31, 2012, D.C. Law 19-132, § 5, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

§ 32-1365. Oversight.

(a) The District of Columbia Office of Human Rights ("Office") shall receive, review, and investigate complaints regarding violations of this chapter and shall take appropriate enforcement action regarding the complaints.

(b) The Office shall respond to a complaint arising pursuant to this chapter no later than one month after the complaint is filed.

(c) The Office shall assess civil penalties in all cases where the Office determines that an employer or employment agency has committed a violation of this chapter.

(May 31, 2012, D.C. Law 19-132, § 6, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

§ 32-1366. Civil penalties.

(a) An employer or employment agency that the Office finds to have violated this chapter shall be subject to a civil penalty for a first violation of $1,000 per claimant, $ 5,000 per claimant for a second violation, and $10,000 per claimant for each subsequent violation, but not to exceed a total of $20,000 per violation. The Office shall collect the penalty from the violator and distribute the funds collected among any employee or potential employee who filed a claim regarding a violation of this chapter.

(b) Nothing set forth in this chapter shall be construed as creating, establishing, or authorizing a private cause of action by an aggrieved person against an employer or employment agency who has violated, or is alleged to have violated, the provisions of this chapter.

(May 31, 2012, D.C. Law 19-132, § 7, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

§ 32-1367. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 30-day review period, the proposed rules shall be deemed approved.

(May 31, 2012, D.C. Law 19-132, § 8, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

§ 32-1368. Applicability of chapter.

This chapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

(May 31, 2012, D.C. Law 19-132, § 9, 59 DCR 2391.)

Legislative history of Law 19-132. — For history of Law 19-132, see notes under § 32-1361.

CHAPTER 15. WORKERS' COMPENSATION.

Sec.
32-1505. Commencement of compensation; maximum compensation.
32-1508. Compensation for disability.
32-1525. Hearings before Mayor.

§ 32-1501. Definitions.

Section references. — This section is referenced in § 6-1405.01, § 32-1508, and § 32-1511.

CASE NOTES

ANALYSIS

Accidental injury.
—Mental disease and emotional distress, accidental injury.
Casual employees.
Employees.
Housing.
Presumptions and burden of proof.
Wages.

Accidental injury.

— Mental disease and emotional distress, accidental injury.

In "mental-mental" workers' compensation cases, in which claimants allege that an emotionally-traumatic workplace event or stressor caused a mental injury, a test for the existence of actual workplace stressors must be one verifying the factual reality of stressors in the workplace environment, rather than one requiring the claimant to prove that a hypothetical average or healthy person would have suffered a similar psychological injury. Muhammad v. D.C. Dep't of Empl. Servs., 34 A.3d 488, 2012 D.C. App. LEXIS 3 (2012).

A primary difference between "physical-mental claims," in which workers' compensation claimants allege that a physical workplace injury caused a mental injury, and "mental-mental claims," in which claimants allege that an emotionally-traumatic workplace event or stressor caused a mental injury, is that in the context of physical-mental disabilities, the physical accident is the unexpected occurrence supplying the necessary, and objective, workplace connection. Muhammad v. D.C. Dep't of Empl. Servs., 34 A.3d 488, 2012 D.C. App. LEXIS 3 (2012).

Casual employees.

Evidence supported conclusion that an employer/employee relationship existed between sole proprietor and workers' compensation claimant, who was sole proprietor's brother-in-law, as necessary for claimant to be eligible for benefits; claimant's lack of specialized skill or professional service that he was providing and, that his work was unskilled made it more likely that claimant was sole proprietor's employee, 26-month period of claimant's employment spanned nearly the entirety of sole proprietor's existence, and pushed the nature of claimant's relationship with sole proprietor beyond "casual" to reflect more of an employer/employee relationship, and even if claimant's work was intermittent, this did not preclude the existence of an employer/employee relationship. Reyes v. D.C. Dep't of Empl. Servs., 48 A.3d 159, 2012 D.C. App. LEXIS 317 (2012).

Employees.

Former assistant principal failed to state a claim for which relief could be granted where she alleged wrongful discharge and retaliation

claims pursuant to D.C. Code § 32-1542, because the Comprehensive Merit Personnel Act (CMPA), D.C. Code § 1-601.01 et seq., provides the exclusive remedy for a District of Columbia public employee who has a work-related complaint of any kind and because D.C. Code § 32-1501(9)(B) excludes from the definition of "employee" those individuals subject to the CMPA. Lewis v. District of Columbia, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 116065 (D.D.C. Aug. 17, 2012).

Housing.

Value of housing "received" as wages is calculated by examining the rate of recompense to which the employee was entitled at the time of the injury, i.e., the dollar value of housing committed to an employee under his or her employment contract, not by the dollar amount of the housing actually enjoyed or paid for. Young v. D.C. Dep't of Empl. Servs., 80 A.3d 635, 2013 D.C. App. LEXIS 776 (2013).

Presumptions and burden of proof.

In determining an employee's average weekly wage, an administrative law judge's finding that there were, among the 13 pre-injury weeks, four "clearly illness-related" weeks was not supported by substantial evidence because the employee did not meet her burden to show that she was ill for one of the two accrued leave weeks. Kelly v. D.C. Dep't of Empl. Servs., 76 A.3d 948, 2013 D.C. App. LEXIS 635 (2013).

Wages.

In determining an employee's average weekly wage, accrued leave payments for two accrued leave weeks were properly considered "wages" because they were a similar advantage received from the employer and thus constituted wage payments. Kelly v. D.C. Dep't of Empl. Servs., 76 A.3d 948, 2013 D.C. App. LEXIS 635 (2013).

In determining an employee's average weekly wage, inclusion in the calculation of a week when the employee did not work but was paid based on minimal accrued leave hours did not understate her earning capacity because she regularly was absent and took leave during the course of her employment. Kelly v. D.C. Dep't of Empl. Servs., 76 A.3d 948, 2013 D.C. App. LEXIS 635 (2013).

LAW REVIEWS AND JOURNAL COMMENTARIES

The Law Of Workers' Compensation: Defining Accidental Injury, 30 How. L.J. 515.

§ 32-1503. Coverage.

Section references. — This section is referenced in § 32-1504.

CASE NOTES

ANALYSIS

Applicability.
Employment relationship.
Exclusive remedy.

Applicability.

Employer was not liable to a mother in a wrongful death and survival action after an employee committed suicide using a gun provided by the employer because the employee's suicide was an intervening act that precluded the employer's liability under District of Columbia law, and the mother effectively admitted that the suicide was a willful and intentional act when the mother argued that the District of Columbia Workers' Compensation Act, D.C. Code § 32-1501 et seq., was inapplicable pursuant to D.C. Code § 32-1503(d); the mother was not entitled to have questions certified to the District of Columbia Court of Appeals pursuant to D.C. Code § 11-723(a) because certification based on the possibility that the District of Columbia Court of Appeals might adopt additional exceptions to its general rule as to suicide had no logical stopping point. Rollins v. Wackenhut Servs., 703 F.3d 122, 2012 U.S. App. LEXIS 26549 (D.C. Cir. 2012).

Employment relationship.

Evidence supported conclusion that an employer/employee relationship existed between sole proprietor and workers' compensation claimant, who was sole proprietor's brother-in-law, as necessary for claimant to be eligible for benefits; claimant's lack of specialized skill or professional service that he was providing and, that his work was unskilled made it more likely that claimant was sole proprietor's employee, 26-month period of claimant's employment spanned nearly the entirety of sole proprietor's existence, and pushed the nature of claimant's relationship with sole proprietor beyond "casual" to reflect more of an employer/employee

relationship, and even if claimant's work was intermittent, this did not preclude the existence of an employer/employee relationship. Reyes v. D.C. Dep't of Empl. Servs., 48 A.3d 159, 2012 D.C. App. LEXIS 317 (2012).

Exclusive remedy.

Employee's tort-related claims for negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligent supervision, which were based on events that occurred while she was at work, were dismissed because the Workers' Compensation law provided the exclusive remedy for these claims, and it was not relevant to the exclusivity analysis that presentation of these claims before the D.C. Department of Employment Services was barred by the applicable statute of limitations. Lockhart v. Coastal Int'l Sec., — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 166330 (D.D.C. Nov. 21, 2012).

LAW REVIEWS AND JOURNAL COMMENTARIES

The Law of Workers' Compensation: Defining Accidental Injury. 30 How.L.J. 515 (1987).

Workers' Compensation: Jurisdiction. 30 How.L.J. 495 (1987).

§ 32-1504. Exclusiveness of liability and remedy.

Section references. — This section is referenced in § 32-1535.

CASE NOTES

ANALYSIS

Construction.
Emotional distress.

Construction.

Employee's tort-related claims for negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligent supervision, which were based on events that occurred while she was at work, were dismissed because the Workers' Compensation law provided the exclusive remedy for these claims, and it was not relevant to the exclusivity analysis that presentation of these claims before the D.C. Department of Employment Services was barred by the applicable statute of limitations. Lockhart v. Coastal Int'l Sec., — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 166330 (D.D.C. Nov. 21, 2012).

Emotional distress.

Employee's tort-related claims for negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligent supervision, which were based on events that occurred while she was at work, were dismissed because the Workers' Compensation law provided the exclusive remedy for these claims, and it was not relevant to the exclusivity analysis that presentation of these claims before the D.C. Department of Employment Services was barred by the applicable statute of limitations. Lockhart v. Coastal Int'l Sec., — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 166330 (D.D.C. Nov. 21, 2012).

Former employee's claim that the employee suffered emotional distress from migraine headaches caused by odors from a defective sewer system which the employer refused to repair was preempted by the District of Columbia Worker's Compensation Act, D.C. Code § 32-1503 et seq., since the alleged injury arose from employment, was not intentional, and was incidental to employment. Bilal-Edwards v. United Planning Org., — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 145619 (D.D.C. Oct. 10, 2012).

§ 32-1505. Commencement of compensation; maximum compensation.

(a) No compensation shall be allowed for the first 3 days of the disability, except the benefits provided for in § 32-1507; provided, that in case the injury results in disability of more than 14 days the compensation shall be allowed from the date of the disability.

(b) Compensation for disability or death shall not exceed the average weekly wages of insured employees in the District of Columbia or $396.78, whichever is greater. For any one injury causing temporary or permanent partial

disability, the payment for disability benefits shall not continue for more than a total of 500 weeks. Within 60 days of the expiration of the duration of the compensation provided for in this subsection, an employee may petition the Mayor for an extension of up to 167 weeks. The extension shall be granted only upon a finding by an independent medical examiner appointed by the Mayor of continued whole body impairment exceeding 20% under the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. An injured employee shall have up to 3 years after termination of nonscheduled benefits to re-open his or her case due to changes in condition.

(c) The minimum compensation for total disability or death shall be 25% of the maximum compensation.

(d) For the purposes of this section, the average weekly wage of insured employees in the District shall be determined by the Mayor as follows:

(1) For the calendar year 2013, the average weekly wage rate is set at $1,416.00.

(2) For years commencing after January 1, 2013, on or before November 1st of each preceding year, the total wages reported on contribution reports for employees, excluding employees of the District government and the United States government, to the Department of Employment Services for the year ending on the preceding June 30th shall be divided by the average number of such employees (determined by dividing the sum of total employees reported in each quarter for the preceding year, excluding employees of the District government and the United States government, by 4). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the nearest cent. The average weekly wage as so determined shall be applicable for the year beginning the following January 1.

(e) The average weekly wage shall not be deemed to have changed for any calendar year unless the computation in subsection (d) of this section results in an increase or decrease of $2 or more, raised to the next even dollar.

(July 1, 1980, D.C. Law 3-77, § 6, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(c), 46 DCR 891; Dec. 24, 2013, D.C. Law 20-61, § 2052, 60 DCR 12472.)

Section references. — This section is referenced in § 32-1506.

Effect of amendments. — The 2013 amendment by D.C. Law 20-61 rewrote (d).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 2052 of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) amendment of this section, see § 2052 of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 20-61. — Law 20-61, the "Fiscal Year 2014 Budget Support Act of 2013," was introduced in Council and assigned Bill No. 20-199. The Bill was adopted on first and second readings on May 22, 2013, and June 26, 2013, respectively. Signed by the Mayor on Aug. 28, 2013, it was assigned Act No. 20-157 and transmitted to Congress for its review. D.C. Law 20-61 became effective on Dec. 24, 2013.

Short title. — Section 2051 of D.C. Law 20-61 provided that Subtitle F of Title II of the act may be cited as the "Workers' Compensation Average Weekly Wage Calculation Alignment Amendment Act of 2013".

Editor's notes. — Applicability of D.C. Law 20-61: Section 11001 of D.C. Law 20-61 provided that, except as otherwise provided, the act shall apply as of October 1, 2013.

CASE NOTES

Benefits award upheld.

Compensation Review Board's ruling that the awards for permanent partial disability schedule benefits and permanent partial wage loss benefits were payable consecutively was upheld. Brown v. D.C. Dep't of Empl. Servs., 83 A.3d 739, 2014 D.C. App. LEXIS 5 (2014).

§ 32-1507. Medical services, supplies, and insurance.

Section references. — This section is referenced in § 32-1505, § 32-1519, § 32-1530, § 32-1535, and § 32-1540.

CASE NOTES

ANALYSIS

Evidence.
Review.

Evidence.

Because the administrative law judge addressed specifically the utilization review report and articulated reasons for rejecting the report, the Workers' Compensation Review Board's conclusion that the employee's surgery was reasonable and necessary was upheld. Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs., 77 A.3d 351, 2013 D.C. App. LEXIS 644 (2013).

Review.

Compensation Review Board's interpretation of this section, holding that the claimant's current claim required reconsideration of her refusal to cooperate with vocational rehabilitation in an early proceeding, was entitled to deference. Brown v. D.C. Dep't of Empl. Servs., 83 A.3d 739, 2014 D.C. App. LEXIS 5 (2014).

§ 32-1508. Compensation for disability.

Compensation for disability shall be paid to the employee as follows:

(1) In case of total disability adjudged to be permanent, 66⅔% of the employee's average weekly wages shall be paid to the employee during the continuance thereof. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any 2 thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined only if, as a result of the injury, the employee is unable to earn any wages in the same or other employment;

(2) In case of disability total in character but temporary in quality, 66⅔% of the employee's average weekly wages shall be paid to the employee during the continuance thereof;

(3) In case of disability partial in character but permanent in quality, the compensation shall be 66⅔% of the employee's average weekly wages which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with paragraph (2) or (4) of this subsection respectively, and shall be paid to the employee, as follows:

(A) Arm lost, 312 weeks' compensation;
(B) Leg lost, 288 weeks' compensation;
(C) Hand lost, 244 weeks' compensation;
(D) Foot lost, 205 weeks' compensation;
(E) Eye lost, 160 weeks' compensation;
(F) Thumb lost, 75 weeks' compensation;
(G) First finger lost, 46 weeks' compensation;

(H) Great toe lost, 38 weeks' compensation;

(I) Second finger lost, 30 weeks' compensation;

(J) Third finger lost, 25 weeks' compensation;

(K) Toe other than great toe lost, 16 weeks' compensation;

(L) Fourth finger lost, 15 weeks' compensation;

(M) Compensation for loss of hearing of 1 ear, 52 weeks. Compensation for loss of hearing of both ears, 200 weeks, provided that the Mayor may establish a waiting period, not to exceed 6 months, during which an employee may not file a claim for loss of hearing resulting from nontraumatic causes in his occupational environment until the employee has been away from such environment for such period, and provided further, that nothing in this subparagraph shall limit an employee's right to file a claim for temporary partial disability pursuant to paragraph (5) of this section;

(N) Compensation for loss of more than 1 phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the 1st phalange shall be one half of the compensation for loss of the entire digit;

(O) Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of the arm or leg; but if amputated between the elbow and the wrist or the knee and the ankle, shall be the same as for loss of a hand or foot;

(P) Compensation for loss of binocular vision or for 80% or more of the vision of an eye shall be the same as for loss of the eye;

(Q) Compensation for loss of 2 or more digits, or 1 or more phalanges of 2 or more digits, of a hand or foot, may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot;

(R) Compensation for permanent total loss of use of a member shall be the same as for loss of the member;

(S) Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member. Benefits for partial loss of vision in 1 or both eyes, or partial loss of hearing in 1 or both ears shall be for a period proportionate to the period benefits are payable for total bilateral loss of vision or total binaural loss of hearing as such partial loss bears to total loss;

(T) The Mayor shall award proper and equitable compensation for serious disfigurement of the face, head, neck or other normally exposed bodily areas not to exceed $7,500;

(U) In any case in which there shall be a loss of, or loss of use of, more than 1 member or parts of more than 1 member set forth in subparagraphs (A) to (S) of this paragraph, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where 1 injury affects only 2 or more digits of the same hand or foot, subparagraph (Q) of this paragraph shall apply; and

(U-i) In determining disability pursuant to subparagraphs (A) through (S) of this subsection, the most recent edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* may be utilized, along with the following 5 factors:

(i) Pain;
(ii) Weakness;
(iii) Atrophy;
(iv) Loss of endurance; and
(v) Loss of function.

(V)(i) In other cases the employee shall elect:

(I) To have his or her compensation calculated in accordance with the formula set forth in either sub-subparagraph (ii)(I) or (II) of this subparagraph; and

(II) To receive the compensation at the time the employee returns to work or achieves maximum medical improvement.

(ii) The compensation shall be 66⅔% of the greater of:

(I) The difference between the employee's actual wage at the time of injury and the average weekly wage, at the time of injury, of the job that the employee holds after the employee has a disability; or

(II) The difference between the average weekly wage, at the time the employee returns to work, of the job that the employee held before the employee had the disability and the actual wage of the job that the employee holds when the employee returns to work.

(iii) If the employee voluntarily limits his or her income or fails to accept employment commensurate with the employee's abilities, the employee's wages after the employee becomes disabled shall be deemed to be the amount the employee would earn if the employee did not voluntarily limit his or her income or did accept employment commensurate with the employee's abilities. Notwithstanding the provisions of this section, in the case of injury occurring on or after April 16, 1999, the periods of compensation set forth in subparagraphs (A) through (S) of this paragraph shall each be reduced by a proportion of 25% of the stated period of weeks, rounded upward to the nearest whole week.

(W) The compensation and remuneration payable to a professional athlete claimant pursuant to subparagraph (V)(ii) of this paragraph shall be determined by referring to the date of the claimant's disability and a date that is not later than the date on which the claimant's employment as a professional athlete would have ended, as determined pursuant to § 32-1501(17C), if the disability for which he or she seeks compensation and remuneration pursuant to subparagraph (V)(ii) of this paragraph had not occurred.

(4) Any compensation to which any claimant would be entitled under paragraph (3) of this section, excepting paragraph (3)(V) of this section, shall, provided the death arises from causes other than the injury, be payable in full to and for the benefit of the persons following:

(A) If there be a surviving spouse or domestic partner and no child of the deceased to such spouse or domestic partner;

(B) If there be a surviving spouse or domestic partner and surviving child or children of the deceased, one half shall be payable to the spouse or domestic partner and the other one half to the surviving child or children;

(C) The Mayor may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child. In

the absence of such a requirement, the appointment for such a purpose shall not be necessary;

(D) If there be a surviving child or children of the deceased but no surviving spouse or domestic partner, then to such child or children;

(E) If there be no surviving spouse or domestic partner and no surviving children, such unpaid amount of the award shall be paid to the survivors specified in § 32-1509 (other than a spouse, domestic partner, or child); and the amount to be paid each such survivor shall be determined by multiplying such unpaid amount of the award by the appropriate percentage specified in § 32-1509(4), but if the aggregate amount to which all such survivors are entitled, as so determined, is less than such unpaid amount of the award, the excess amount shall be divided among such survivors pro rata according to the amount otherwise payable to each.

(5) In case of temporary partial disability, the compensation shall be 66⅔% of the injured employee's wage loss to be paid during the continuance of such disability, but shall not be paid for a period exceeding 5 years. Wage loss shall be the difference between the employee's average weekly wage before the employee had the disability and the employee's actual wages after the employee had the disability. If the employee voluntarily limits his income or fails to accept employment commensurate with his abilities, then his wages after the employee had the disability shall be deemed to be the amount he would earn if he did not voluntarily limit his income or did accept employment commensurate with his abilities.

(6)(A) If an employee receives an injury, which combined with a previous occupational or nonoccupational disability or physical impairment causes substantially greater disability or death, the liability of the employer shall be as if the subsequent injury alone caused the subsequent amount of disability and shall be the payment of:

(i) All medical expenses;

(ii) All monetary benefits for temporary total or partial injuries; and

(iii) Monetary benefits for permanent total or partial injuries up to 104 weeks.

(B) The special fund shall reimburse the employer solely for the monetary benefits paid for permanent total or partial injuries after 104 weeks.

(C) The requirements of this paragraph shall apply to injuries occurring prior to April 16, 1999.

(7) In each case, payment of benefits shall be 66⅔% of the employee's average weekly wage.

(8) The Mayor may approve lump-sum settlements agreed to in writing by the interested parties, discharging the liability of the employer for compensation, notwithstanding §§ 32-1516 and 32-1517, in any case where the Mayor determines that it is in the best interest of an injured employee entitled to compensation or individuals entitled to benefits pursuant to § 32-1509. The Mayor shall approve the settlement, where both parties are represented by legal counsel who are eligible to receive attorney fees pursuant to § 32-1530. These settlements shall be the complete and final dispositions of a case and shall be a final binding compensation order.

(9) Repealed.

(10) An award for disability may be made after the death of an injured employee from causes other than work-related injury. If the award made is for permanent partial disability, pursuant to paragraph (3)(A) through (U) of this section, the award shall be payable in full pursuant to paragraph (4) of this section. If the award made is for any other category of disability, the amount of the award shall be computed from the date of the injury to the date of death, and shall be payable in full in the same manner as an award payable pursuant to paragraph (4) of this section.

(July 1, 1980, D.C. Law 3-77, § 9, 27 DCR 2503; May 10, 1989, D.C. Law 7-231, § 44, 36 DCR 492; Mar. 6, 1991, D.C. Law 8-198, § 2(d), 37 DCR 6890; Apr. 16, 1999, D.C. Law 12-229, § 2(e), 46 DCR 891; Oct. 14, 1999, D.C. Law 13-49, § 12(b), 46 DCR 5153; Apr. 24, 2007, D.C. Law 16-305, § 48(c), 53 DCR 6198; Sept. 12, 2008, D.C. Law 17-231, § 31(d), 55 DCR 6758; Sept. 26, 2012, D.C. Law 19-171, § 37(b), 59 DCR 6190.)

Section references. — This section is referenced in § 32-1501, § 32-1524, and § 32-1540.

Effect of amendments.

The 2012 amendment made a technical correction to D.C. Law 17-231, § 31(d) which did not affect this section as codified.

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

§ 32-1511. Determination of average weekly wage.

CASE NOTES

Housing.

Value of housing "received" as wages is calculated by examining the rate of recompense to which the employee was entitled at the time of the injury, i.e., the dollar value of housing committed to an employee under his or her employment contract, not by the dollar amount of the housing actually enjoyed or paid for. Young v. D.C. Dep't of Empl. Servs., 80 A.3d 635, 2013 D.C. App. LEXIS 776 (2013).

Compensation Review Board erred in directing the administrative law judge to calculate an employee's average weekly wage so as to disregard the amount his employer was contractually obligated to pay him in the form of a housing allowance because an honest approximation of the employee's probable future earning capacity included both his salary and his housing allowance under his 12-month employment contract. Young v. D.C. Dep't of Empl. Servs., 80 A.3d 635, 2013 D.C. App. LEXIS 776 (2013).

Where an employee is being compensated via a contract fixed by the year, that provides both for an annual salary and a monthly housing allowance, his or her average weekly wage must be calculated based on the terms of wages, both salary and housing, committed to in the contract. Young v. D.C. Dep't of Empl. Servs., 80 A.3d 635, 2013 D.C. App. LEXIS 776 (2013).

§ 32-1513. Notice of injury or death.

Section references. — This section is referenced in § 32-1538.

CASE NOTES

Time for giving notice.

Compensation Review Board erred in vacating an ALJ's award of temporary total disability because an employee gave an employer notice within thirty days of knowing he was injured as a result of a workplace accident; the employee's notice within days of his becoming aware that he had sustained an injury capable of impacting his work duties gave the employer ample time to provide treatment to minimize the seriousness of the injury and to facilitate investigation of the facts surrounding the injury. Poole v. D.C. Dep't of Empl. Servs., 77 A.3d 460, 2013 D.C. App. LEXIS 656 (2013).

Injury in respect of which compensation is payable, of which the claimant must give notice to the employer, is an injury that is (or at least is capable of becoming) disabling in the economic sense; the statutory language of the notice requirement therefore indicates that the thirty-day notice period is triggered when the employee is or should have been aware that an impairment (physical or psychological) may be compensable because it is likely to result in loss of wages. Poole v. D.C. Dep't of Empl. Servs., 77 A.3d 460, 2013 D.C. App. LEXIS 656 (2013).

§ 32-1521. Presumptions.

CASE NOTES

ANALYSIS

Claims coming within the provisions of chapter—In general.
—Causal connection, claims coming within the provisions of chapter.

Claims coming within the provisions of chapter—In general.

— Causal connection, claims coming within the provisions of chapter.

To benefit from the statutory presumption that a private sector workers' compensation claim comes within the Workers' Compensation Act, the employee need only show some evidence of a disability and a work-related event or activity which has the potential of resulting in or contributing to the disability; such a showing effectuates the presumption, which operates to establish a causal connection between the disability and the work-related event, activity, or requirement, and shifts the burden of production to the employer to produce substantial evidence demonstrating that the disability did not arise out of and in the course of employment. Hensley v. District of Columbia Dept. of Employment Services, 2012 WL 3508932 (2012).

§ 32-1525. Hearings before Mayor.

(a) In making an investigation or inquiry or conducting a hearing the Mayor shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter, but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties. Prior to the hearing before the Mayor the parties may conduct such discovery, including but not limited to the use of interrogatories and depositions as, in the opinion of the Mayor, will be helpful in determining the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(b) Hearings before the Mayor shall be open to the public and shall be reported stenographically or by such other method capable of producing an accurate transcript. The Mayor shall by regulation provide for the preparation of a record of the hearings and other proceedings before the Mayor.

(July 1, 1980, D.C. Law 3-77, § 26, 27 DCR 2503; Sept. 20, 2012, D.C. Law 19-168, § 2172, 59 DCR 8025.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-168 substituted "reported stenographically or by such other method capable of producing an accurate transcript" for "stenographically reported" in the first sentence of (b).

Legislative history of Law 19-168. — Law 19-168, the "Fiscal Year 2013 Budget Support Act of 2012," was introduced in Council and assigned Bill No. 19-743. The Bill was adopted on first and second readings on May 15, 2012, and June 5, 2012, respectively. Signed by the Mayor on June 22, 2012, it was assigned Act No. 19-385 and transmitted to Congress for its review. D.C. Law 19-168 became effective on September 20, 2012.

§ 32-1530. Attorney fees.

Section references. — This section is referenced in § 32-1508.

CASE NOTES

Dismissal.

Dismissal of employer's application for formal hearing to challenge Office of Workers' Compensation's (OWC's) informal recommendation for continuation of disability benefits, after employer filed consent motion to withdraw the application due to resolution of contested issues, was not "award of compensation" that was greater than amount paid or tendered by employer, as condition precedent to award of attorney fees to claimant; dismissal order did not reach merits of parties' contested issues but was procedural mechanism undertaken by agency in light of parties' voluntary resolution of claim. Fluellyn v. District of Columbia Dept. of Employment Services, 2012 WL 2504914 (2012).

§ 32-1535. Compensation for injuries where third persons are liable.

Section references. — This section is referenced in § 32-1507.

Temporary legislation. — For temporary (225 days) amendment of this section, see §§ 2 and 3 of the Workers' Compensation Statute of Limitations Temporary Amendment Act of 2013 (D.C. Law 20-25, Oct. 17, 2013, 60 DCR 11115), applicable to causes of action for negligence for which the 3-year statute of limitations has not expired.

Emergency legislation. — For temporary (90 days) amendment of this section, see §§ 2 and 3 of the Workers' Compensation Statute of Limitations Emergency Act of 2013 (D.C. Act 20-98, June 27, 2013, 60 DCR 9851, 20 DCSTAT 1456).

For temporary (90 days) amendment of this section, see §§ 2 and 3 of the Workers' Compensation Statute of Limitations Congressional Review Emergency Amendment Act of 2013 (D.C. Act 20-177, October 4, 2013, 60 DCR 3958).

§ 32-1542. Retaliatory actions by employer prohibited.

CASE NOTES

Retaliatory actions.

Former assistant principal failed to state a claim for which relief could be granted where she alleged wrongful discharge and retaliation claims pursuant to D.C. Code § 32-1542, because the Comprehensive Merit Personnel Act, D.C. Code § 1-601.01 et seq., provides the exclusive remedy for a District of Columbia public employee who has a work-related complaint of any kind. Lewis v. District of Columbia, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 116065 (D.D.C. Aug. 17, 2012).

Chapter 16. Workforce Investment Implementation.

Subchapter I. General

Sec.
32-1603. Workforce Investment Council.

Subchapter I. General.

§ 32-1603. Workforce Investment Council.

(a) There is created a Workforce Investment Council ("Council") pursuant to section 111(b) and (c) [29 U.S.C. § 2821(b) and (c)] and section 117(c)(4) [29 U.S.C. § 2832 (c)(4)] of the Federal Act, to assist in the development of the State Unified Workforce Plan to carry out the functions described by the Federal Act.

(b) The Council shall assist the Mayor in:

(1) Developing the District's workforce investment system;

(2) Assigning duties and responsibilities to the Department of Human Services ("DHS") and the Department of Employment Services ("DOES") to implement the Federal Act, and to do so in a manner that avoids conflicts of interest and capitalizes on the experience developed by workforce partners who are efficient and effective at meeting the requirements of the Federal Act;

(3) Developing an employment statistics system, as described in section 15(e) of the Wagner-Peyser Act, approved October 13, 1982 (96 Stat. 1392; 29 U.S.C. § 49L-2(e));

(4) Preparing an annual report and submitting it to the Council of the District of Columbia by September 30th of each year;

(5) Establishing performance standards for training and employment programs pursuant to § 32-1606;

(6) Fostering and coordinating initiatives of the District of Columbia Public Schools and the University of the District of Columbia as well as with any institution of higher education accredited by the Middle States Association of Colleges and Schools and located in the District to enhance the contributions of public schools and institutions of higher education to the implementation of the District employment and training policy;

(7) Examining federal and local laws and regulations to assess whether those laws and regulations present barriers to achieving any of the goals of this subchapter. The Council shall, as it deems appropriate, issue to the Mayor and the Council of the District of Columbia reports on its findings, including recommendations for changes in local and federal laws or regulations concerning employment and training programs or service; and

(8) Developing a wage progression strategy that includes mechanisms to help low-income workers upgrade skills to assist them in moving up the career ladder toward self-sufficiency.

(9) Implementing the Educational Stepladder program established by subchapter III of this chapter [§ 32-1651 et seq.], including establishing the criteria for certificate course approval and working with interested institutions of higher education accredited by the Middle States Association of Colleges and

Schools and located in the District of Columbia to develop a curriculum of courses that will meet the institutions's educational mission as well as provide Educational Stepladder students with marketable knowledge or skills that meet the stated workforce needs of business and industry in the District.

(c) The Council shall have grant-making authority for the purpose of providing competitive grants under the authority granted to the Council by this subchapter; provided, that grants shall be administered pursuant to the requirements set forth in part B of subchapter XII-A of Chapter 3 of Title 1 [§ 1-328.11 et seq.].

(d) The Council shall have grant-making authority for the purpose of providing competitive grants based on the recommendations of the Workforce Intermediary Task Force, made pursuant to the Workforce Intermediary Task Force Establishment Temporary Act of 2011, effective December 2, 2011 (D.C. Law 19-55; 58 DCR 8962), and approved by the Council in the Workforce Intermediary Task Force Recommendations Emergency Approval Resolution of 2012, effective June 5, 2012 (Res. 19-454; 59 DCR 7454); provided, that grants shall be administered pursuant to the requirements set forth in part B of subchapter XII-A of Chapter 3 of Title 1 [§ 1-328.11 et seq.].

(July 18, 2000, D.C. Law 13-150, § 4, 47 DCR 4644; Dec. 7, 2004, D.C. Law 15-205, § 1155(a), 51 DCR 8441; Mar. 25, 2009, D.C. Law 17-353, § 129(a), 56 DCR 1117; Dec. 24, 2013, D.C. Law 20-61, § 2012, 60 DCR 12472.)

Cross references. — Establishment of a workforce intermediary pilot program, § 2-219.04b.

Section references. — This section is referenced in § 32-751 and § 32-1651.

Effect of amendments.

The 2013 amendment by D.C. Law 20-61 added (c) and (d).

Emergency legislation.

For temporary (90 days) amendment of this section, see § 2012 of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) amendment of this section, see § 2012 of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 20-61. — Law 20-61, the "Fiscal Year 2014 Budget Support Act of 2013," was introduced in Council and assigned Bill No. 20-199. The Bill was adopted on first and second readings on May 22, 2013, and June 26, 2013, respectively. Signed by the Mayor on Aug. 28, 2013, it was assigned Act No. 20-157 and transmitted to Congress for its review. D.C. Law 20-61 became effective on Dec. 24, 2013.

Short title. — Section 2011 of D.C. Law 20-61 provided that Subtitle B of Title II of the act may be cited as the "Workforce Investment Council and Workforce Intermediary Grant-Making Authority Amendment Act of 2013".

Editor's notes. — Applicability of D.C. Law 20-61: Section 11001 of D.C. Law 20-61 provided that, except as otherwise provided, the act shall apply as of October 1, 2013.

TITLE 33. PARTNERSHIPS. [REPEALED].

SUBTITLE I. GENERAL PROVISIONS.

CHAPTER 1. UNIFORM PARTNERSHIP ACT (1996).

Subchapter I. General Provisions.

§ 33-101.01. Definitions. [Repealed].

Editor's notes.
Section 89(a) of D.C. Law 19-171 corrected the law reference in D.C. Law 18-378, § 3(x).

CHAPTER 2. UNIFORM LIMITED PARTNERSHIP ACT (1987).

Subchapter I. General Provisions.

§ 33-201.01. Definitions. [Repealed].

Editor's notes.
Section 89(a) of D.C. Law 19-171 corrected the law reference in D.C. Law 18-378, § 3(y).

TITLE 34. PUBLIC UTILITIES.

SUBTITLE I. APPLICABLE PROVISIONS GENERALLY.

Chapter
2. Definitions Applicable to Subtitle.
8. Public Service Commission; Members; Counsel; Employees.

SUBTITLE III. ELECTRICITY.

13A. Electric Company Infrastructure Improvement Financing.
14A. Renewable Energy Portfolio Standards.
15. Retail Electric Competition and Consumer Protection.

SUBTITLE V. TELECOMMUNICATIONS.

18. Emergency and Non-Emergency Number Telephone System Assessments Fund.

SUBTITLE VI. WATER AND SEWER.

22. Water and Sewer Authority.

SUBTITLE I. APPLICABLE PROVISIONS GENERALLY.

Chapter 2. Definitions Applicable to Subtitle.

Sec.
34-207. "Electrical company" defined.
34-214. "Public utility", "utility" or "utility company" defined.

§ 34-207. "Electrical company" defined.

The term "electric company" when used in this subtitle includes every corporation, company, association, joint-stock company or association, partnership, or person and doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, physically transmitting or distributing electricity in the District of Columbia to retail electric customers. The term excludes any building owner, lessee, or manager who, respectively, owns, leases, or manages, the internal distribution system serving the building and who supplies electricity and other related electricity services solely to occupants of the building for use by the occupants. The term also excludes a person or entity that does not sell or distribute electricity and that owns or operates equipment used exclusively for the charging of electric vehicles.

(Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1; May 9, 2000, D.C. Law 13-107, § 201(b)(5), 47 DCR 1091; Mar. 19, 2013, D.C. Law 19-252, § 101(a), 59 DCR 14932.)

Section references. — This section is referenced in § 8-1771.06, § 8-1773.01, § 34-1311.01, § 34-1501, and § 34-1561.

Effect of amendments.

The 2013 amendment by D.C. Law 19-252 added the last sentence.

Legislative history of Law 19-252. — Law 19-252, the "Energy Innovation and Savings Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-749. The Bill was adopted on first and second readings on Nov. 1, 2012 and Nov. 15, 2012, respectively. Signed by the Mayor on Dec. 7, 2012, it was assigned Act No. 19-562 and transmitted to Congress for its review. D.C. Law 19-252 became effective on Mar. 19, 2013.

Editor's notes. — Section 301 of D.C. Law 19-252 provided that the Mayor shall issue rules to implement the provisions of the act within 180 days of its effective date [Mar. 19, 2013].

§ 34-214. "Public utility", "utility" or "utility company" defined.

The term "public utility", "utility" or "utility company" as used in this subtitle shall mean and embrace every street railroad, street railroad corporation, common carrier, gas plant, gas company, electric company, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipeline company. Until the initial implementation date of Chapter 15 of this title, the term shall also include every electric generating facility owned and operated by the electric company. The term "public utility" excludes a person or entity that owns or operates electric vehicle supply equipment but does not sell or distribute electricity, an electric vehicle charging station service company, or an electric vehicle charging station service provider.

(Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; May 9, 2000, D.C. Law 13-107, § 201(b)(2), 47 DCR 1091; Mar. 16, 2005, D.C. Law 15-227, § 17(a)(1), 51 DCR 10549; Mar. 19, 2013, D.C. Law 19-252, § 101(b), 59 DCR 14932.)

Section references. — This section is referenced in § 34-1551.

Effect of amendments.

The 2013 amendment by D.C. Law 19-252 added the last sentence.

Legislative history of Law 19-252. — See note to § 34-207.

Editor's notes. — Section 301 of D.C. Law 19-252 provided that the Mayor shall issue rules to implement the provisions of the act within 180 days of its effective date [Mar. 19, 2013].

CHAPTER 7. PENAL PROVISIONS.

Subchapter I. General.

§ 34-706. Failure to perform duty or obey Commission order; violation of pipeline safety regulation.

Section references. — This section is referenced in § 34-731, § 34-732, and § 34-912.

CASE NOTES

Penalty.

Given that a utility was found to have failed to obey an order made by the Public Service Commission and given that D.C. Code § 34-711 specifically contemplated cumulative penalties, the trial court's imposition of a $5,000 penalty under D.C. Code § 34-706(a) for the utility's violation of an order did not produce an absurd result or run afoul of the tenets of statutory construction. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, 61 A.3d 662, 2013 D.C. App. LEXIS 51 (2013).

§ 34-711. Rights, penalties and forfeitures not released; penalties and forfeitures cumulative.

CASE NOTES

Penalty.

Given that a utility was found to have failed to obey an order made by the Public Service Commission and given that D.C. Code § 34-711 specifically contemplated cumulative penalties, the trial court's imposition of a $5,000 penalty under D.C. Code § 34-706(a) for the utility's violation of an order did not produce an absurd result or run afoul of the tenets of statutory construction. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, 61 A.3d 662, 2013 D.C. App. LEXIS 51 (2013).

CHAPTER 8. PUBLIC SERVICE COMMISSION; MEMBERS; COUNSEL; EMPLOYEES.

Sec.
34-801. Members; eligibility; oath.
34-804. People's Counsel — Appointment, compensation, qualifications; personnel; duties.
34-808.02. Supervision and regulation considerations.

§ 34-801. Members; eligibility; oath.

The Public Service Commission of the District of Columbia shall be composed of 3 commissioners appointed by the Mayor by and with the advice and consent of the Council, except that the members (other than the Mayor of the District of Columbia) serving as commissioners of such Commission on January 1, 1975, by virtue of their appointment by the President, by and with the advice and consent of the Senate, shall continue to serve until the expiration of the terms for which they were so appointed. One of the 3 commissioners shall be designated as Chairperson of the Commission by the Mayor of the District of Columbia, with the advice and consent of the Council. Such designation shall continue for the length of the appointee's unexpired term or until otherwise terminated by the Mayor. The members first appointed by the Mayor, by and with the advice and consent of the Council, on or after January 2, 1975, shall serve until June 30, 1978. The Mayor may remove any commissioner for neglect of duty or misconduct in office. When the Mayor determines that any member has engaged in any neglect of duty or misconduct in office, he or she shall notify such member, in writing, of the charge against him or her and that such member has 10 days within which to request a hearing before the Council on such charge. If such member fails to request a hearing within 10 days after receiving such notice, then the Mayor may remove

such member and appoint a new member. The hearing requested by a member may be either open or closed, as requested by such member. In the event such hearing is closed, the vote of the Council as a result of such hearing shall be taken at an open meeting of the Council. The Council shall begin such hearings within 60 calendar days after receiving notice from the Mayor indicating that a member has requested such a hearing. If two-thirds of the Council members vote to remove such member, then such member shall be removed. The Mayor may appoint a new member to serve until the expiration of the term of the member removed or for a new 4-year term. The Chairperson of the Commission shall serve as the chief administrative officer of the Commission. The terms of office for all successors shall be 4 years after being confirmed by the Council or the duration of the predecessor's term at the discretion of the Mayor. No commissioner shall, during his term of office, hold any other public office. The Commissioners shall receive a salary equivalent to that received by an employee compensated at the midpoint of the E5 level pursuant to subchapter X-A of Chapter 6 of Title 1 [§ 1-610.51 et seq.]. The Chairperson shall receive a salary equivalent to 5% higher than the midpoint of the E5 level pursuant to subchapter X-A of Chapter 6 of Title 1 [§ 1-610.51 et seq.]. The Chairperson and Commissioners shall receive cost-of-living adjustments and other base salary increases equivalent to those received by an employee compensated pursuant to subchapter VIII of Chapter 6 of Title 1 [§ 1-608.01 et seq.]. The Mayor shall furnish the Public Service Commission with suitable offices and quarters. No person shall be eligible to the office of commissioner of the Public Service Commission of the District of Columbia who has not been a bona fide resident of the District of Columbia for a period of at least 3 years next preceding his appointment or who has voted or claimed residence elsewhere during such period. No person shall be eligible to the office of commissioner of the Public Service Commission who is, or who shall have been during a period of one year preceding his appointment, directly or indirectly interested in any public utility or other entity appearing before the Commission or in any stock, bond, mortgage, security, or contract of any public utility or entity, except for stocks that are part of a publicly listed mutual fund other than a utility-focused mutual fund. A person shall not be eligible for appointment as a commissioner if the person, at any time during the 5 years preceding appointment, personally served as an officer, director, owner, manager, partner, or legal representative of a public utility, affiliate, or direct competitor of a public utility. If any such commissioner shall voluntarily become so interested, his office shall ipso facto become vacant; and if any such commissioner shall become so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest, and if he fails to do so his office shall become vacant. Before entering upon the duties of his office each commissioner, the secretary of the Commission, the counsel of the Commission and every employee of said Commission shall take and subscribe the constitutional oath of office, and shall in addition thereto make oath or affirmation before and file with the clerk of the Superior Court of the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia.

(Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97(a); Dec. 15, 1926, 44 Stat. 920, ch. 8, §. 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(39)(A); Dec. 24, 1973, 87 Stat. 811, Pub. L. 93-198, title IV, § 493(b); Jan. 3, 1975, 88 Stat. 2178, Pub. L. 93-635, § 17; Mar. 3, 1979, D.C. Law 2-139, § 3205(hhh), 25 DCR 5740; Oct. 24, 1981, D.C. Law 4-43, § 2, 28 DCR 4261; Apr. 12, 2005, D.C. Law 15-342, § 303(c), 52 DCR 2346; Mar. 2, 2007, D.C. Law 16-191, § 50, 53 DCR 6794; May 3, 2014, D.C. Law 20-101, § 2, 61 DCR 1880.)

Section references. — This section is referenced in § 1-315.02, § 1-523.01, § 1-636.02, § 2-223.01, § 34-804, and § 34-2001.

Effect of amendments.

The 2014 amendment by D.C. Law 20-101 rewrote the 11th, 13th, 15th, and 16th sentences.

Legislative history of Law 20-101. — Law 20-101, the "Public Service Commission and People's Counsel Terms of Service Harmonization Amendment Act of 2014," was introduced in Council and assigned Bill No. 20-346. The Bill was adopted on first and second readings on January 7, 2014, and February 4, 2014, respectively. Signed by the Mayor on February 28, 2014, it was assigned Act No. 20-289 and transmitted to Congress for its review. D.C. Law 20-101 became effective on May 3, 2014.

Editor's notes.

Section 4 of D.C. Law 20-101 provided that §§ 2(a), 2(b) and 3 of the act shall apply to nominations made on or after May 3, 2014.

§ 34-804. People's Counsel — Appointment, compensation, qualifications; personnel; duties.

(a) There is hereby established within the Public Service Commission of the District of Columbia, established by § 34-801, an office to be known as the "Office of the People's Counsel." The Office shall be a party, as of right, in any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia.

(b) There shall be at the head of such Office the People's Counsel who shall be appointed by the Mayor of the District of Columbia, by and with the advice and consent of the Council of the District of Columbia, and who shall serve for a term of 4 years. The People's Counsel shall be entitled to receive compensation at the maximum rate for Level II of the Senior Executive Attorney Service, pursuant to §§ 1-608.53 and 1-608.58. No person shall be appointed to the position of People's Counsel unless that person is admitted to practice before the District of Columbia Court of Appeals. Before entering upon the duties of such office, the People's Counsel shall take and subscribe the same oaths as that required by the commissioners of the Commission, including an oath or affirmation before the Clerk of the Superior Court of the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia. The People's Counsel shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.

(c) The People's Counsel is authorized to employ or to retain and fix the compensation of employees or independent contractors, including attorneys, necessary to perform the functions vested in the People's Counsel by this section, and § 34-912, as amended by the Utility Regulatory Assessment Clarification Act of 1984, and prescribe their authority and duties.

(c-1) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Office of the People's Counsel unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the People's Counsel. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the Office of the People's Counsel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The People's Counsel shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(d) The People's Counsel:

(1) Shall represent and appeal for the people of the District of Columbia at hearings of the Commission and in judicial proceedings in the District of Columbia courts when these proceedings and hearings involve the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission;

(2) May represent and appeal for the people of the District of Columbia at proceedings before related federal regulatory agencies and commissions and federal courts when those proceedings involve the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission;

(3) May represent and appear for petitioners appearing before the Commission for the purpose of complaining in matters of rates or services;

(4) May investigate independently, or within the context of formal proceedings before the Commission, the services given by, the rates charged by, and the valuation of the properties of the public utilities under the jurisdiction of the Commission; and

(5) May develop means to otherwise assure that the interests of the users of the products of or services furnished by public utilities under the jurisdiction of the Commission are adequately represented in the course of proceedings before the Commission, federal or District of Columbia courts, or federal regulatory agencies and commissions involving those interests, including public information dissemination, consultative services, and technical assistance.

(e) In defining its positions while advocating on matters pertaining to the operation of public utility or energy companies, the Office shall consider the public safety, the economy of the District of Columbia, the conservation of natural resources, and the preservation of environmental quality.

(Jan. 2, 1975, 88 Stat. 1975, Pub. L. 93-614, § 1; Mar. 3, 1979, D.C. Law 2-139, § 3205(gg), 25 DCR 5740; Mar. 14, 1985, D.C. Law 5-153, § 2, 31 DCR 6440;

Oct. 20, 2005, D.C. Law 16-33, § 3017, 52 DCR 7503; Feb. 6, 2008, D.C. Law 17-108, § 212(a), 54 DCR 10993; Aug. 15, 2008, D.C. Law 17-210, § 2, 55 DCR 6982; Oct. 22, 2008, D.C. Law 17-250, § 402, 55 DCR 9225; Mar. 25, 2009, D.C. Law 17-353, § 212, 56 DCR 1117; May 3, 2014, D.C. Law 20-101, § 3, 61 DCR 1880.)

Section references. — This section is referenced in § 1-604.06, § 1-636.02, § 34-805, § 34-1118, and § 34-2001.

Effect of amendments.

The 2014 amendment by D.C. Law 20-101 substituted "4 years" for "3 years'" in (b).

Legislative history of Law 20-101. — See note to § 34-801.

Editor's notes.

Section 4 of D.C. Law 20-101 provided that §§ 2(a), 2(b) and 3 of the act shall apply to nominations made on or after May 3, 2014.

§ 34-808.02. Supervision and regulation considerations.

In supervising and regulating utility or energy companies, the Commission shall consider the public safety, the economy of the District, the conservation of natural resources, and the preservation of environmental quality.

(Mar. 4, 1913, ch. 50, § 8, par. 96A, as added Oct. 22, 2008, D.C. Law 17-250, § 401, 55 DCR 9225; redesignated as par. 97B, Sept. 26, 2012, D.C. Law 19-171, § 45(a), 59 DCR 6190.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 redesignated the Act of Mar. 4, 1913, ch. 150, § 8, par. 96A as the Act of Mar. 4, 1913, ch. 150, § 8, par. 97B.

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

CHAPTER 9. RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS.

§ 34-902. Commission may adopt rules and regulations.

Section references. — This section is referenced in § 34-1552.

Temporary legislation. — For temporary (225 days) amendment of this section, see § 3 of the Critical Infrastructure Freedom of Information Temporary Amendment Act of 2013 (D.C. Law 20-71, February 22, 2014, 61 DCR 27).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 3 of the Critical Infrastructure Freedom of Information Emergency Amendment Act of 2013 (D.C. Act 20-229, November 29, 2013, 60 DCR 16788, 20 DCSTAT 2630).

For temporary (90 days) amendment of this section, see § 3 of the Critical Infrastructure Freedom of Information Congressional Review Emergency Amendment Act of 2014 (D.C. Act 20-285, February 20, 2014, 61 DCR 1603).

§ 34-905. Production of records of utilities; attendance of witnesses; duties of United States Attorney and D.C. Attorney General.

CASE NOTES

Penalty.

Given that a utility was found to have failed to obey an order made by the Public Service Commission and given that D.C. Code § 34-711 specifically contemplated cumulative penalties, the trial court's imposition of a $5,000 penalty under D.C. Code § 34-706(a) for the utility's violation of an order did not produce an absurd result or run afoul of the tenets of statutory construction. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, 61 A.3d 662, 2013 D.C. App. LEXIS 51 (2013).

§ 34-907. Utilities to furnish information required by Commission; maps, books, reports to be delivered on request.

CASE NOTES

Authorized actions.

Given that a utility was found to have failed to obey an order made by the Public Service Commission and given that D.C. Code § 34-711 specifically contemplated cumulative penalties, the trial court's imposition of a $5,000 penalty under D.C. Code § 34-706(a) for the utility's violation of an order did not produce an absurd result or run afoul of the tenets of statutory construction. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, 61 A.3d 662, 2013 D.C. App. LEXIS 51 (2013).

SUBTITLE III. ELECTRICITY.

CHAPTER 13A. ELECTRIC COMPANY INFRASTRUCTURE IMPROVEMENT FINANCING.

Subchapter I. Definitions and Findings

Sec.

34-1311.01. Definitions.
34-1311.02. Findings.

Subchapter II. Issuance of Bonds; Security Interest in DDOT Underground Electric Company Infrastructure Improvement Revenue

34-1312.01. Establishment of the DDOT Underground Electric Company Infrastructure Improvement Fund.
34-1312.02. Bond authorization.
34-1312.03. Payment and security.
34-1312.04. Bond details.
34-1312.05. Sale of the Bonds.
34-1312.06. Financing and closing documents.
34-1312.07. Bonds not District liability.
34-1312.08. Legal investment.
34-1312.09. DDOT Underground Electric Company Infrastructure Improvement Property.
34-1312.10. District's interest in DDOT Underground Electric Company Infrastructure Improvement Property.
34-1312.11. Exemption from District taxes.
34-1312.12. Bonds not electric company liability.

Subchapter III. Commission Authorizations

Part A

Financing Orders

34-1313.01. Commission authorizations.
34-1313.02. Application for financing order.
34-1313.03. Consideration of applications; financing order.
34-1313.04. Irrevocability of financing order.
34-1313.05. Effect of financing order.

Sec.
34-1313.06. Limitation on Commission action.

Part B

Selection and Construction of Underground Infrastructure Improvement Projects

34-1313.07. Underground infrastructure improvement projects plan.
34-1313.08. Content of application and plan.
34-1313.09. Consideration of triennial Underground Infrastructure Improvement Projects Plan.
34-1313.10. Commission order.
34-1313.11. Use of DDOT Underground Electric Company Infrastructure Improvements.
34-1313.12. Content of an application to amend an Underground Infrastructure Improvement Projects Plan.
34-1313.13. Application to amend order authorizing Underground Project Charges.
34-1313.14. Approval of schedule provisions applying the true-up mechanism to DDOT Underground Electric Company Infrastructure Improvement Charge.
Sec.
34-1313.15. Application for approval of annual adjustment of Underground Project Charges.

Part C

Expedition; Reconsideration; Judicial Review; Review and Analysis

34-1313.16. Expedition.
34-1313.17. Reconsideration of Commission orders.
34-1313.18. Judicial review of Commission orders.
34-1313.19. Review and analysis.

Subchapter IV. Commission and OPC Funding; Commission Rules and Regulations

34-1314.01. Commission and OPC funding.
34-1314.02. Commission rules and regulations.
34-1314.03. Waiver of certain permitting fees; acceptance of Bonds in lieu of cash deposits.
34-1314.04. Gas company recovery of gas plant relocation costs.

Subchapter V. General Provisions

34-1315.01. Applicability.

Subchapter I. Definitions and Findings.

§ 34-1311.01. Definitions.

For the purposes of this chapter, the term:

(1) "Ancillary agreement" means any bond insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other similar arrangement designed to promote the credit quality and marketability of the Bonds or to mitigate the risk of an increase in interest rates.

(2) "Authorized delegate" means the City Administrator, the Chief Financial Officer, the Treasurer, the Deputy Mayor for Planning and Economic Development, or any officer or employee of the executive office of the Mayor to whom the Mayor has delegated any of the Mayor's functions under this chapter pursuant to § 1-204.22(6) and who has been designated as an authorized delegate for purposes of this chapter.

(3) "Bonds" means the revenue Bonds, notes, or other obligations (including refunding Bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this chapter.

(4) "Bond counsel" means a firm or firms of attorneys designated as bond counsel from time to time by the Mayor.

(5) "Chief Financial Officer" means the Chief Financial Officer of the District of Columbia.

(6) "Closing documents" means all documents and agreements other than financing documents that may be necessary and appropriate to issue, sell, and

deliver the Bonds contemplated thereby, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

(7) "Commission" means the Public Service Commission of the District of Columbia as it may be constituted from time to time and any successor agency exercising the same or similar functions.

(8) "Debt service" means payment of principal, premium, if any, and interest on the Bonds.

(9) "DDOT" means the District Department of Transportation.

(10) "DDOT Underground Electric Company Infrastructure Improvements" means underground conduits and duct banks for the distribution of electricity within the District, electrical vaults, manholes, transformer pads, and similar facilities, including facilities ancillary to the foregoing, designed by the electric company, constructed or to be constructed by DDOT, and transferred to, owned, and maintained by the electric company after certain inspections and approvals by the electric company for the exclusive use of the electric company in the distribution of electricity within the District.

(11) "DDOT Underground Electric Company Infrastructure Improvement Activity" means the civil engineering for and the construction and installation of DDOT Underground Electric Company Infrastructure Improvements.

(12) "DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirement" means that amount of revenue required by the District to pay the financing costs, to fund any required reserves with respect to the Bonds and to maintain any coverage ratios required by the financing documents.

(13) "DDOT Underground Electric Company Infrastructure Improvement Charge" means a non-bypassable adjusting surcharge, which surcharge shall be adjusted periodically, as set forth in the pertinent financing order, collected by the electric company in an agency capacity, and paid by certain customers of the electric company pursuant to a financing order issued by the Commission for the payment of financing costs of Bonds issued by the District pursuant to this chapter and the cost of the Commission's financial advisor, which surcharge shall be calculated to ensure timely recovery of amounts sufficient to provide timely payment of the scheduled principal of and interest on the pertinent Bonds and all other financing costs contemplated by the financing order, whether or not the DDOT Underground Electric Company Infrastructure Improvements are constructed.

(14) "DDOT Underground Electric Company Infrastructure Improvement Costs" means any cost incurred by DDOT, including capitalized costs relating to an underground electric plant, capitalized costs associated with design and engineering work, expenses that DDOT incurs for the development of annual construction plans, and other expenses incurred or expected to be incurred by or for the account of DDOT in undertaking DDOT Underground Electric Company Infrastructure Improvement Activity, including preliminary expenses and investments and other costs that reasonably may be incurred in support of the DDOT Underground Electric Company Infrastructure Improvement Activity.

(15) "DDOT Underground Electric Company Infrastructure Improvement Fund" means the fund established by § 34-1312.01.

(16) "DDOT Underground Electric Company Infrastructure Improvement Property" means the property rights and interests created in the District pursuant to this chapter and the pertinent financing order, including, without limitation, the right, title, and interest in and to:

(A) The DDOT Underground Infrastructure Improvement Charges, as the same may adjusted from time to time in accordance with procedures established in the pertinent financing order;

(B) All revenues, collections, claims, payments, money, or proceeds of or arising from the DDOT Underground Infrastructure Improvement Charges including DDOT Underground Electric Company Infrastructure Improvement Revenue or constituting DDOT Underground Infrastructure Improvement Charges, regardless of whether such revenues, collections, claims, payments, money, or proceeds are billed, received, or maintained together with or commingled with other revenues, collections, claims, payments, money, or proceeds; and

(C) All rights to obtain adjustments to the DDOT Underground Infrastructure Improvement Charges.

(17) "DDOT Underground Electric Company Infrastructure Improvement Revenue" means the aggregation of receipts, collections, payments, moneys, claims, or other proceeds derived from DDOT Underground Electric Company Infrastructure Improvement Charges.

(18) "Electric company" shall have the same meaning as provided in § 34-207 and as used in this chapter shall mean the Potomac Electric Power Company, and its permitted successors and assigns.

(19) "Electric Company Infrastructure Improvements" means underground electrical cable, fuses, switches, transformers, and ancillary facilities, including above-ground pad-mounted transformers, and other equipment, constructed or to be constructed by the electric company, including the electric company's portion of conduit not included in DDOT Underground Electric Company Infrastructure Improvements that is required in conjunction with constructing and operating new underground facilities to be used for the distribution of electricity, but does not include the construction of a new underground electric plant when the costs associated with the construction and operation of such an underground electric plant, including capital costs, are to be recovered through rates, as approved by the Commission pursuant to § 34-901 and not through the DDOT Underground Electric Company Infrastructure Improvement Charges or Underground Project Charges.

(20) "Electric Company Infrastructure Improvement Activity" means the civil and electrical engineering for, and acquisition, construction and installation of, Electric Company Infrastructure Improvements and the removal of overhead electric distribution facilities no longer used, or useful, in providing electric distribution service in the District due to the construction of Electric Company Infrastructure Improvements.

(21) "Electric Company Infrastructure Improvement Costs" means any costs incurred by the electric company, including the amortization of regulatory assets and capitalized costs relating to electric plant including depreciation expense and design and engineering work incurred, or expected to be

incurred, by the electric company in undertaking Electric Company Infrastructure Improvement Activity, and the unrecovered value of electric company property that is retired, together with any demolition cost or similar cost that exceeds the salvage value of the property. The term includes preliminary expenses and investments associated with Electric Company Infrastructure Improvement Activity that are incurred by the electric company prior to receipt of an order applicable to costs incurred with respect to the Electric Company Infrastructure Improvement Activity in addition to expenses that may be incurred for development of annual construction plans, customer communication, and other expenses that may develop in support of the Electric Company Infrastructure Improvement Activity.

(22) "Electric Company Infrastructure Improvement Revenue" means the aggregation of receipts, collections, payments, moneys, claims, and other proceeds derived from Underground Project Charges.

(23) "Electric plant" shall have the same meaning as provided in § 34-206.

(24) "Financial advisor" means an entity whose services are retained by the Commission to assist the Commission in the issuance, amendment, or administration of a financing order.

(25) "Financing costs" means the costs to issue, service, repay, or refinance Bonds issued under this chapter, whether incurred upon issuance of or over the life of the Bonds, and approved for recovery in the pertinent financing order. Without limitation, "Financing Costs" may include, as applicable:

(A) Debt service on Bonds;

(B) Any payment required under an ancillary agreement and any amount required to fund or replenish a debt service reserve account or other account established under any indenture, trust agreement, ancillary agreement, or other financing document relating to the Bonds;

(C) Any federal, state, or local taxes, payments in lieu of taxes, franchise fees, or license fees imposed on DDOT Underground Electric Company Infrastructure Improvement Revenues; and

(D) Any cost related to issuing the Bonds, administering and servicing DDOT Underground Electric Company Infrastructure Improvement Property and the Bonds, including, without limitation, costs of calculating adjustments of the DDOT Underground Electric Company Infrastructure Improvement Charge, servicing fees and expenses, trustee fees and expenses, legal fees and expenses, accounting fees and expenses, administrative fees and expenses, placement fees, underwriting fees, fees and expenses of the District's or the Commission's advisors and outside counsel, if any, rating agency fees, and any other related cost.

(26) "Financing documents" means the documents other than closing documents that relate to the financing or refinancing of transactions to be affected through the issuance, sale, and delivery of the Bonds, including any required collection agreement, indenture, offering document, ancillary agreement, and any required supplements to any such documents.

(27) "Financing order" means an order of the Commission pursuant to this chapter that grants, in whole or in part, an application filed pursuant to

this chapter by the electric company and that, among its other provisions, authorizes the creation of the DDOT Underground Electric Company Infrastructure Improvement Property and the imposition and periodic true-up of DDOT Underground Electric Company Infrastructure Improvement Charges.

(28) "Gas company" shall have the same meaning as provided in § 34-209 and as used in this chapter shall mean the Washington Gas Light Company, and any successor thereto.

(29) "Gas plant" shall have the same meaning as provided in § 34-210.

(30) "Home Rule Act" means Chapter 2 of Title 1 [§ 1-201.01 et seq.].

(31) "Indenture" means the trust indentures (including a master trust indenture and any supplemental trust indenture) pursuant to which one or more series of the Bonds are issued pursuant to this chapter.

(32) "Lateral feeder" means a 1-kV to 35-kV (phase-to-phase) line tapped off of a distribution mainline primary feeder for supplying loads, which may be protected by a fuse at the interconnection point to the mainline primary feeder, and may have one phase, 2 phases, or 3 phases.

(33) "Mainline primary feeder" means a 1-kV to 35-kV (phase-to-phase) distribution line originating at the substation distribution bus that supplies lateral feeders and distribution transformers that convert voltage to customer service levels, which are normally 3-phase circuits.

(34) "Mayor" means the Mayor of the District of Columbia or an Authorized Delegate.

(35) "Ongoing financing costs" means financing costs that are not upfront financing costs and any upfront financing costs not paid from the proceeds of Bonds.

(36) "OPC" means the Office of the People's Counsel for the District of Columbia and any successor thereto.

(37) "Public Utilities Commission Act" means Subtitle I of Title 34 [§ 34-101 et seq.].

(38) "Secondary feeder" means the portion of an electric distribution circuit originating at the low-voltage secondary winding of a distribution transformer and transmitting power at customer service voltage levels to interconnect with a customer service drop line, which has voltages less than 1000 V, often 480/277 V, 208/120 V, or 120/240 V and can be single phase or 3 phase.

(39) "Servicing agreement" means an agreement between the District and the electric company relating to the collection and remittance of the DDOT Underground Electric Company Infrastructure Improvement Revenue.

(40) "Trustee" means a trustee under any indenture.

(41) "Underground Infrastructure Improvement Projects Plan" means a construction plan prepared by DDOT and the electric company that identifies DDOT Underground Electric Company Infrastructure Improvement Activity and the Electric Company Infrastructure Improvement Activity to be undertaken.

(42) "Underground Project Charge" means an annually adjusted surcharge paid by certain customers of the electric company for its recovery of the Electric Company Infrastructure Improvement Costs, together with the electric company's rate of return as approved by the Commission.

(43) "Upfront financing costs" means the expenses associated with the structuring, marketing, and issuance of the Bonds, including, but not limited to, the funding of one or more debt service reserve funds, but not including scheduled debt service or other ongoing financing costs to the extent such ongoing financing costs are payable from DDOT Underground Electric Company Infrastructure Improvement Revenue.

(May 3, 2014, D.C. Law 20-102, § 101, 61 DCR 1882.)

Legislative history of Law 20-102. — Law 20-102, the "Electric Company Infrastructure Improvement Financing Act of 2014," was introduced in Council and assigned Bill No. 20-387. The Bill was adopted on first and second readings on January 7, 2014, and February 4, 2014, respectively. Signed by the Mayor on March 3, 2014 it was assigned Act No. 20-290 and transmitted to Congress for its review. D.C. Law 20-102 became effective on May 3, 2014.

§ 34-1311.02. Findings.

The Council finds that:

(1) Global climate change has increased the frequency and severity of destructive weather patterns. Accordingly, electric power distribution service in the District of Columbia is vulnerable to equipment failures on the overhead electric distribution system of the electric company for many reasons, including high winds, flooding, lightning strikes, snow and ice accumulations, foreign contact between overhead equipment and animals, trees, and other objects, and other causes. In the past, this damage has caused the loss of electric power over extended time periods to residential and commercial customers; which damage and power loss have created economic losses for the District and its citizens, including critical infrastructure customers and other high-priority users of electricity. It can be expected that similar outages on the electric company's overhead distribution system will continue to occur absent taking additional intensified outage-prevention measures.

(2) Electric system modernization is necessary to establish 21st century electric distribution systems to promote the public interest through increased system reliability, resiliency, reliability, and flexibility during all types of weather events, including major storms. The frequency of electric power outages within the District can be expected to decrease when overhead power lines in vulnerable locations are relocated underground. Consequently, selectively undergrounding certain overhead power lines can be expected to increase system reliability and reduce the economic, social, and other impacts on the District's electricity users caused by repeated power outages.

(3) Section 1-204.90 provides that the Council may by act authorize the issuance of District Bonds to borrow money to finance, refinance, or reimburse, and to assist in the financing, refinancing, or reimbursing of, the cost of capital projects or undertakings (including utility facilities) that will contribute to the health, welfare, or safety of residents of the District, as determined by the Council.

(4) The authorization, issuance, sale, and delivery of securitized Bonds, the proceeds of which shall be used by DDOT to finance the construction of certain underground facilities that will be used by the electric company in

connection with undergrounding particularly vulnerable electric power lines and their ancillary facilities, thus, contributing to the health, welfare, and safety of residents of the District, are in the public interest and will accomplish the purposes and intent of § 1-204.90.

(5) Electric system modernization will require an unprecedented investment by the District and the electric company, which consequently, will be paid by District ratepayers through the DDOT Underground Electric Company Infrastructure Improvement Charge and the Underground Project Charge.

(6) A special financing structure to support this unprecedented improvement to the electricity distribution infrastructure requires a specific legislative framework, and this legislation establishes that framework. The additional charges authorized by this legislation will be used solely to finance the construction and implementation of improvements to the distribution system to increase system reliability.

(7) The Council finds that the Mayor and the electrical company should make every practical effort to ensure that District residents are hired for newly created jobs funded by any mechanism wherein the costs of such funding are recovered through the DDOT Underground Electric Company Infrastructure Improvement Charge or the Underground Project Charge, with a goal being that at least 100% of all related jobs are filled by District residents and 100% of the construction contracts are awarded to District businesses, where qualified to perform such work. Moreover, the Mayor and the electric company should make every practical effort to increase the use of District apprentices when executing contractor and subcontractor agreements to implement electric system modernization.

(8) By December 31, 2015, and by each December 31st and June 30th thereafter until December 31, 2027, or the sooner completion of the work contemplated by this chapter, the Mayor and the electric company shall issue written reports to the Council that describe and evaluate their respective efforts in meeting the stated goals of this chapter, where applicable, to identify, hire, and train District residents, where qualified to perform such work, and award construction contract to District businesses.

(9) The Mayor and the electric company will be expected to make every practical effort to achieve these goals through contracting and hiring procedures that award additional preference points to qualified businesses and labor resources that advance the goals of this legislation.

(May 3, 2014, D.C. Law 20-102, § 102, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1311.01.

Subchapter II. Issuance of Bonds; Security Interest in DDOT Underground Electric Company Infrastructure Improvement Revenue.

§ 34-1312.01. Establishment of the DDOT Underground Electric Company Infrastructure Improvement Fund.

(a)(1) There is established as a special nonlapsing fund, separate and apart from the General Fund, the DDOT Underground Electric Company Infrastructure Improvement Fund ("Fund"). The funds deposited in the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

(2) The Fund shall be used solely for the purposes of this chapter.

(b) The DDOT Underground Electric Company Infrastructure Improvement Revenue shall be collected by the electric company acting as agent in accordance with the servicing agreement and remitted to the trustee (or to a fund or account designated by the financing documents) for application by the trustee in accordance with this chapter and the indenture. All DDOT Underground Electric Company Infrastructure Improvement Revenue collected, or to be collected, by the electric company or any affiliate or agent thereof shall upon receipt by the electric company or any affiliate or agent, as the case may be, be held in trust for the benefit of the trustee and shall be deemed collected and transferred to the trustee in accordance with this chapter and the servicing agreement. All DDOT Underground Electric Company Infrastructure Improvement Revenue so collected, wherever held or deposited and whether having been remitted to the trustee or not, shall automatically be pledged at the time of receipt to the repayment of the Bonds pursuant to this chapter and the indenture. The electric company shall have no rights in or to the DDOT Underground Electric Company Infrastructure Improvement Revenue. The sole responsibility of the electric company shall be to act in an agency capacity for the collection of the DDOT Underground Electric Company Infrastructure Improvement Revenue and to remit the DDOT Underground Electric Company Infrastructure Improvement Revenue to a trustee in accordance with the servicing agreement. In the event of the electric company's failure to collect and remit the DDOT Underground Electric Company Infrastructure Improvement Revenue to the trustee, the District may remove the electric company under and in accordance with the servicing agreement, but the District shall have no recourse against the assets of the electric company. The electric company shall have no responsibility with respect to the DDOT Underground Electric Company Infrastructure Improvement Revenue after remittance to the trustee in accordance with the servicing agreement.

(c) The Commission's financing order shall provide that the electric company shall collect and remit to the trustee payments received by the electric company for the DDOT Underground Electric Company Infrastructure Im-

provement Revenue promptly following receipt of such payment in accordance with the servicing agreement. The DDOT Underground Electric Company Infrastructure Improvement Revenue is pledged pursuant to § 34-1312.03(b) to pay the debt service on and retirement of the Bonds without further action by the Council, as permitted by § 1-204.90(f), which security interest shall attach at the time of receipt of the DDOT Underground Electric Company Infrastructure Improvement Revenue by the electric company.

(d) The trustee shall receive, hold, and invest the DDOT Underground Electric Company Infrastructure Improvement Revenue and shall deposit all such revenues upon receipt into the DDOT Underground Electric Company Infrastructure Improvement Fund to be held, invested, and used as specified in the financing documents and this chapter.

(e) All amounts deposited in the DDOT Underground Electric Company Infrastructure Improvement Fund, plus all investments or earnings on those amounts, are irrevocably dedicated and pledged to the payment of debt service on the Bonds and other financing costs as provided in this chapter.

(f) If, at the end of any fiscal year of the District following the issuance of the Bonds authorized by this chapter, the value of cash and investments in the DDOT Underground Electric Company Infrastructure Improvement Fund exceeds the amount of all payments authorized by this chapter and the financing documents, including required and discretionary deposits into reserve funds, amounts to be set aside for additional series of Bonds issued under this chapter, and any coverage requirements required by the indenture, during the upcoming fiscal year, the excess shall be used in accordance with the provisions of the pertinent financing order.

(May 3, 2014, D.C. Law 20-102, § 201, 61 DCR 1882.)

Section references. — This section is referenced in § 34-1311.01 and § 34-1313.01.

Legislative history of Law 20-102. — Law 20-102, the "Electric Company Infrastructure Improvement Financing Act of 2014," was introduced in Council and assigned Bill No. 20-387. The Bill was adopted on first and second readings on January 7, 2014, and February 4, 2014, respectively. Signed by the Mayor on March 3, 2014 it was assigned Act No. 20-290 and transmitted to Congress for its review. D.C. Law 20-102 became effective on May 3, 2014.

§ 34-1312.02. Bond authorization.

(a) The Council approves and authorizes the issuance of one or more series of Bonds in a total principal amount not to exceed $375 million. The Bonds, which may be issued at any time and from time to time during the 10-year period immediately following May 3, 2014, in one or more series, shall be tax-exempt or taxable as the Mayor shall determine and shall be payable and secured as provided in § 34-1312.03.

(b) The proceeds of the Bonds shall be used:

(1) To pay the upfront financing costs relating to issuing and delivering the Bonds, including, but not limited to, the Commission's costs of retaining a financial advisor; and

(2) To pay or reimburse DDOT Underground Electric Company Infrastructure Improvement Costs; provided, that no bond proceeds shall be

provided to DDOT pursuant to this chapter until the Commission shall have first approved the Underground Infrastructure Improvement Projects Plan.

(c) The aggregate principal amount of the Bonds issued in connection with financing DDOT Underground Electric Company Infrastructure Improvement Activity shall not, at any time, exceed the total planned cost of the portion of the DDOT Underground Electric Company Infrastructure Improvement Activity and the upfront financing costs approved in the pertinent financing order.

(d) By December 31 of each year during which the Bonds authorized by this chapter have been issued and continuing until the net proceeds of the Bonds have been fully disbursed, DDOT shall file with the Commission an accounting report depicting DDOT's cumulative receipt of the Bond proceeds during the previous fiscal year and DDOT's cumulative expenditures of those proceeds.

(May 3, 2014, D.C. Law 20-102, § 202, 61 DCR 1882.)

Section references. — This section is referenced in § 34-1312.04 and § 34-1313.19.

Legislative history of Law 20-102. — See note to § 34-1312.01.

§ 34-1312.03. Payment and security.

(a) Except as may be otherwise specifically provided in this chapter, debt service on the Bonds shall be payable solely from proceeds received from the sale of the Bonds, income realized from the temporary investment of those proceeds, DDOT Underground Electric Company Infrastructure Improvement Revenue, income realized from the temporary investment of the DDOT Underground Electric Company Infrastructure Improvement Revenue before payment to the bond holders, and other moneys that, as provided in the financing documents, may be made available for payment of the Bonds from sources other than the District or the electric company, all as provided for in the financing documents.

(b) The DDOT Underground Electric Company Infrastructure Improvement Revenue is irrevocably pledged as security for the repayment of the Bonds and any financing costs. Payment of the Bonds shall be secured as provided in this chapter and the financing documents and by an assignment by the District of certain of its rights under the financing documents and closing documents to the trustee for the benefit of the bond holders.

(c) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the Bonds pursuant to the financing documents.

(May 3, 2014, D.C. Law 20-102, § 203, 61 DCR 1882.)

Section references. — This section is referenced in § 34-1312.01 and § 34-1312.02.

Legislative history of Law 20-102. — See note to § 34-1312.01.

§ 34-1312.04. Bond details.

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in accordance with this chapter in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the Bonds of each series, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the Bonds, including a determination that the Bonds may be issued in certificated or book-entry form;

(2) The principal amount of the Bonds to be issued and the denominations of the Bonds;

(3) The rate or rates of interest or the method for determining the rate or rates of interest on the Bonds;

(4) The date or dates of issuance, sale, and delivery of, and the payment of interest on the Bonds, and the maturity date or dates of the Bonds;

(5) The terms under which the Bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;

(6) Provisions for the registration, transfer, and exchange of the Bonds and the replacement of mutilated, lost, stolen, or destroyed Bonds;

(7) The creation of any reserve fund, sinking fund, or other fund with respect to the Bonds;

(8) The time and place of payment of interest on the Bonds and for repayment of the Bonds;

(9) Procedures for monitoring the use of the proceeds received from the sale of the Bonds, a copy of which shall be provided to the Commission, to ensure that the proceeds are properly applied and used to accomplish the purposes of the Home Rule Act and this chapter;

(10) Actions necessary to qualify the Bonds under blue sky laws of any jurisdiction where the Bonds are marketed; and

(11) The terms and types of credit enhancement under which the Bonds may be secured.

(b) The Bonds shall contain a legend which shall provide that the Bonds do not constitute an indebtedness of the District, that the Bonds are not general obligations of the District and are not secured by the faith and credit or the taxing power of the District. The legend shall further state that the Bonds are special limited obligations of the District payable solely from the revenues derived from the collection of DDOT Underground Electric Company Infrastructure Improvement Revenue. The legend shall also state that the Bonds do not constitute lending of the public credit for private undertakings, as prohibited in § 1-206.02(a)(2).

(c) The Bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor and attested by the Secretary of the District by the Secretary's manual or facsimile signature.

(d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the Bonds.

(e) The Bonds of any series may be issued in accordance with the terms of an indenture to be entered into by the District and a trustee to be selected by the Mayor, and may be subject to the terms of one or more agreements entered into by the District pursuant to § 1-204.90(a)(4).

(f) The Bonds may be issued at any time or from time to time during the 10-year period specified in § 34-1312.02(a) in one or more issues and in one or more series.

(g) The Bonds are declared to be issued for essential public and governmental purposes. The Bonds and the interest on the Bonds and the income from the Bonds, and all monies pledged or available to pay or secure the payment of the Bonds, shall at all times be exempt from taxation by the District, except for estate, inheritance, and gift taxes.

(h) The District covenants and agrees that it will not limit or alter the DDOT Underground Electric Company Infrastructure Improvement Revenue pledged to secure the Bonds or the basis on which the DDOT Underground Electric Company Infrastructure Improvement Revenue is collected or allocated, will not take any action to impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the Bonds, and will not in any way impair the rights or remedies of the holders of the Bonds, until the Bonds, together with interest on the Bonds, and all costs and expenses in connection with any suit, action, or proceeding by or on behalf of the holders of the Bonds, are fully met and discharged. This covenant and agreement of the District shall be included as part of the contract between the District and the holders of the Bonds.

(i) This chapter constitutes a contract between the District and the holders of the Bonds. To the extent that any acts or resolutions of the Council may be in conflict with this chapter, this chapter shall be controlling.

(j) Consistent with § 1-204.90(a)(4)(B):

(1) Upon the effective date of the pertinent financing order, there is hereby granted a first priority statutory lien to the trustee for the benefit of the holders of the Bonds on all DDOT Underground Electric Company Infrastructure Improvement Property then existing or thereafter arising pursuant to the terms of the financing order;

(2) A pledge made and security interest granted in the DDOT Underground Electric Company Infrastructure Improvement Property created in respect of the Bonds or pursuant to any related financing document shall be valid, binding, and perfected from the time the security interest is created, with or without physical delivery of any funds or any property and with or without any further action;

(3) The lien of the pledge shall be valid, binding, and perfected as against all parties having any claim of any kind in tort, contract, or otherwise against the District, whether or not such party has notice; and

(4) The security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to the security interest is recorded or filed.

(May 3, 2014, D.C. Law 20-102, § 204, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1312.01.

§ 34-1312.05. Sale of the Bonds.

(a) The Bonds of any series may be sold at negotiated or competitive sale at, above, or below par, to one or more persons or entities, and upon terms that the Mayor considers to be in the best interest of the District.

(b) The Mayor may execute offering documents in connection with each sale of the Bonds, may deem final any such offering document for purposes of compliance with federal laws and regulations governing such matters, and may authorize the distribution of the documents in connection with the Bonds being sold.

(c) The Mayor is authorized to deliver the executed and sealed Bonds for authentication, and, after the Bonds have been authenticated, to deliver the Bonds to the original purchasers of the Bonds upon payment of the purchase price.

(d) The Bonds shall not be issued until the Mayor receives an approving opinion from bond counsel as to the validity of the Bonds of such series and, if the interest on the Bonds is expected to be exempt from federal income taxation, the treatment of the interest on the Bonds for purposes of federal income taxation.

(e) Chapter 3A of Title 2 [§ 2-351.01 et seq.] and subchapter III-A of Chapter 3 of Title 47 [§ 47-351.01 et seq.] shall not apply to any contract the Mayor may from time to time enter into or determine to be necessary or appropriate for purposes of this chapter.

(May 3, 2014, D.C. Law 20-102, § 205, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1312.01.

§ 34-1312.06. Financing and closing documents.

(a) The Mayor is authorized to prescribe the final form and content of all financing documents and all closing documents that may be necessary or appropriate to issue, sell, and deliver the Bonds.

(b) The Mayor is authorized to execute the financing documents and any closing documents by the Mayor's manual or facsimile signature.

(c) The Mayor's execution and delivery of the financing documents and the closing documents to which the District is a party shall constitute conclusive evidence of the Mayor's approval of the final form and content of the executed financing documents and the executed closing documents.

(d) The Mayor is authorized to deliver the executed and sealed financing documents and closing documents before or simultaneously with the issuance, sale, and delivery of the Bonds and to ensure the due performance of the obligations contained in the executed, sealed, and delivered financing documents and closing documents.

(May 3, 2014, D.C. Law 20-102, § 206, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1312.01.

§ 34-1312.07. Bonds not District liability.

(a) The Bonds shall not constitute an indebtedness of the District. The Bonds are not general obligations of the District and are not secured by a

pledge of or involve the faith and credit or the taxing power of the District. The Bonds are the special limited obligations of the District payable solely from the DDOT Underground Electric Company Infrastructure Improvement Property. Nothing contained in the Bonds, or in the related financing documents and closing documents, shall create an obligation on the part of the District to make payments with respect to the Bonds from sources other than the DDOT Underground Electric Company Infrastructure Improvement Revenue. The Bonds do not constitute lending of the public credit for private undertakings as prohibited in § 1-206.02(a)(2).

(b) No person, including, but not limited to, any bondholder, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District to perform any covenant, undertaking, or obligation under this chapter, the Bonds, the financing documents, or the closing documents, or as a result of the incorrectness of any representation in or omission from the financing documents or the closing documents.

(c) The District and the electric company shall take such actions as may be reasonably necessary so that the Bonds are not treated as debt on the electric company's books and records under United States generally accepted accounting principles or by a major United States rating agency, and the Commission shall not take any action or issue any order that may have a contrary effect.

(d) Nothing contained in this chapter shall obligate the electric company to take any action or execute any document that would have the effect of causing the Bonds to be treated as debt on the electric company's books and records under United States generally accepted accounting principles or by a major United States rating agency.

(May 3, 2014, D.C. Law 20-102, § 207, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1312.01.

§ 34-1312.08. Legal investment.

The Bonds shall be legal instruments in which public officers and public bodies of the District, insurance companies, insurance company associations, and other persons carrying on an insurance business, banks, bankers, banking institutions, including savings and loan associations, building and loan associations, trust companies, and other persons carrying on a banking business, administrators, guardians, executors, trustees and other fiduciaries, and other persons authorized to invest in Bonds or other obligations of the District, may legally invest funds, including capital, in their control. The Bonds are also securities that legally may be deposited with and received by public officers and public bodies of the District or any agency of the District for any purpose for which deposit of Bonds or other obligations of the District is authorized by law.

(May 3, 2014, D.C. Law 20-102, § 208, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1312.01.

§ 34-1312.09. DDOT Underground Electric Company Infrastructure Improvement Property.

(a) Upon the effective date of the pertinent financing order, the DDOT Underground Electric Company Infrastructure Improvement Property created by the financing order shall constitute an existing, present property right of the District. The District's property right in the DDOT Underground Electric Company Infrastructure Improvement Revenue shall not be affected by the fact that the collection and remittance to the trustee of DDOT Underground Electric Company Infrastructure Improvement Charges by the electric company, in an agency capacity in accordance with the servicing agreement, depends on the electric company continuing to provide electric distribution services to customers in the District or continuing to perform servicing functions relating to the collection of DDOT Underground Electric Company Infrastructure Improvement Charges. DDOT Underground Electric Company Infrastructure Improvement Property shall exist whether or not the DDOT Underground Electric Company Infrastructure Improvement Charges have been billed, have accrued, or have been collected and notwithstanding the fact that the value or amount of the DDOT Underground Electric Company Infrastructure Improvement Revenue may be dependent on the electric company's provision of future service to its customers.

(b) All DDOT Underground Electric Company Infrastructure Improvement Charges shall continue to be collected until the Bonds have been paid in full and financing costs related to the Bonds have been paid in full.

(c) All or any portion of the DDOT Underground Electric Company Infrastructure Improvement Property may be transferred or assigned by the District for the limited purpose of pledging the same as security for the repayment of Bonds issued to provide financing for the DDOT Underground Electric Company Infrastructure Improvement Activities and other financing costs authorized by this chapter and approved in the pertinent financing order. All the DDOT Underground Electric Company Infrastructure Improvement Property is pledged for the repayment of the Bonds or payment of financing costs. No transfer, sale, conveyance, assignment, or grant of security interest in or pledge of DDOT Underground Electric Company Infrastructure Improvement Property shall require authorization from the Commission.

(d) If the electric company defaults on any required remittance of DDOT Underground Electric Company Infrastructure Improvement Revenue to the trustee, a court, upon application of an interested party and without limiting any other remedies available to the applying party, shall order the sequestration of the DDOT Underground Electric Company Infrastructure Improvement Revenue with a trustee selected by the District for the benefit of the District and the bondholders and any financing parties. The court's order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceeding with respect to the electric company or any affiliate thereof.

(e) The DDOT Underground Electric Company Infrastructure Improvement Revenue and the interests of the District, the bondholders, any financing party are not subject to setoff, counterclaim, surcharge, or defense by the electric company, any affiliate thereof, or any other person or in connection with the bankruptcy, reorganization, or other insolvency proceeding of the electric company, any affiliate thereof, or any other entity.

(f) Any successor to the electric company shall be bound by the requirements of this section and shall perform and satisfy all obligations of, and have the same rights and obligations as, the electric company under the financing order and this chapter in the same manner and to the same extent as the electric company, including, without limitation, the obligation to collect the DDOT Underground Electric Company Infrastructure Improvement Revenue and remit the revenue to the trustee.

(May 3, 2014, D.C. Law 20-102, § 209, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1312.01.

§ 34-1312.10. District's interest in DDOT Underground Electric Company Infrastructure Improvement Property.

The District's property ownership interest in the DDOT Underground Electric Company Infrastructure Property shall be effective and perfected against all third parties and shall not be affected or impaired by, among other things, the occurrence of any one or more of the following:

(1) Comingling of DDOT Underground Electric Company Infrastructure Improvement Charges or DDOT Underground Electric Company Infrastructure Improvement Revenue with other amounts;

(2) Any recourse that the electric company may have against the District;

(3) The obligation of the electric company acting in an agency capacity in accordance with the servicing agreement to collect DDOT Underground Electric Company Infrastructure Improvement Revenue and to remit the DDOT Underground Electric Company Infrastructure Improvement Revenue so collected to the trustee; and

(4) Any subsequent order of the Commission amending the financing order pursuant to this chapter.

(May 3, 2014, D.C. Law 20-102, § 210, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1312.01.

§ 34-1312.11. Exemption from District taxes.

The imposition, collection, and receipt of DDOT Underground Electric Company Infrastructure Improvement Charges shall not be subject to taxation by the District.

(May 3, 2014, D.C. Law 20-102, § 211, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1312.01.

§ 34-1312.12. Bonds not electric company liability.

The Bonds shall not constitute an indebtedness of the electric company.

(May 3, 2014, D.C. Law 20-102, § 212, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1312.01.

Subchapter III. Commission Authorizations.

PART A.

FINANCING ORDERS.

---

§ 34-1313.01. Commission authorizations.

(a) The Commission is authorized to issue financing orders upon application by the electric company. All financing orders, among their other provisions, shall:

(1) Specify the maximum amount of Bonds that are authorized for issuance, the amount not to exceed the limitations set forth in this chapter, including the maturities, scheduled maturities, or interest rates, or interest rate determination methods and other details of the Bonds as the Commission determines appropriate;

(2) Describe the DDOT Underground Electric Infrastructure Improvement Activities to be paid through the issuance of the Bonds and recovered through DDOT Underground Electric Company Infrastructure Improvement Charges;

(3) Specify the qualitative or quantitative limitations on financing costs to be recovered (not to impair the ability to pay and service the Bonds in accordance with their terms);

(4) Assess DDOT Underground Electric Company Infrastructure Improvement Charges among the distribution service customer classes of the electric company in accordance with the distribution service customer class cost allocations approved by the Commission for the electric company and in effect pursuant to the most recent base rate case; provided, that no such charges shall be assessed against the electric company's residential aid discount customer class or any succeeding customer class approved by the Commission for the purpose of providing economic relief to a specified low-income customer class. DDOT Underground Electric Company Infrastructure Improvement Charges shall be billed to customers by the electric company as a volumetric surcharge;

(5) Describe the true-up mechanism to reconcile actual collections of DDOT Underground Electric Company Infrastructure Improvement Charges with forecasted collection on at least an annual basis to ensure that the collections of DDOT Underground Electric Company Infrastructure Improvement Charges are adequate to pay debt service on the associated Bonds when due pursuant to the expected amortization schedule, to fund all debt service reserve accounts to the required levels, and to pay when due all other expected ongoing financing costs as provided in § 34-1313.14;

(6) Authorize the creation of the DDOT Underground Electric Company Infrastructure Improvement Property;

(7) Authorize the imposition, billing, and collection of DDOT Underground Electric Company Infrastructure Improvement Charges to pay debt service on the Bonds and other ongoing financing costs;

(8) Describe the DDOT Underground Electric Company Infrastructure Improvement Property that will be created and that may be used to pay and secure the payment of the debt service of the Bonds and other ongoing financing costs;

(9) Authorize the execution and delivery of one or more servicing or collection agreements with the applicant electric company, including, without limitation, provisions for fixing the servicing fee, arrangements for an alternate servicer of the DDOT Underground Electric Company Infrastructure Improvement Charges, requiring the electric company to collect and remit the resulting DDOT Underground Electric Company Infrastructure Improvement Charges in its entirety to the trustee, as provided in § 34-1312.01, and requiring that any successor to the electric company, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding, any merger or acquisition, sale or other business combination, or transfer by operation of law, as a result of utility restructuring or otherwise, shall perform and satisfy all obligations of the electric company under the servicing agreement and the pertinent financing order in the same manner and to the same extent as the electric company, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the DDOT Underground Electric Company Infrastructure Improvement Charges;

(10) Prescribe the filing of billing and collection reports relating to the DDOT Underground Electric Company Infrastructure Improvement Charges; and

(11) Consistent with this chapter, contain such other findings, determinations, and authorizations as the Commission shall consider appropriate.

(b) All financing orders shall be operative and in full force and effect from the time fixed for them to become effective by the Commission.

(c) The financing order shall provide that except to implement any true-up mechanism as provided is § 34-1313.14, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust the DDOT Underground Electric Company Infrastructure Improvement Charges approved in the financing order.

(May 3, 2014, D.C. Law 20-102, § 301, 61 DCR 1882.)

Cross references. — As to the applicability of the charges authorized by §§ 34-1313.01 and § 34-1313.10, see § 34-1315.01.

Section references. — This section is referenced in § 34-1313.14.

Legislative history of Law 20-102. — Law 20-102, the "Electric Company Infrastructure Improvement Financing Act of 2014," was introduced in Council and assigned Bill No. 20-387. The Bill was adopted on first and second readings on January 7, 2014, and February 4, 2014, respectively. Signed by the Mayor on March 3, 2014 it was assigned Act No. 20-290 and transmitted to Congress for its review. D.C. Law 20-102 became effective on May 3, 2014.

§ 34-1313.02. Application for financing order.

(a) Within 60 days from May 3, 2014, the District shall provide the electric company with estimates of the DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirements that will enable the District to pay the debt service and other financing costs associated with Bonds issued pursuant to this chapter and such other information as may be in the possession of the District as may be necessary or reasonably desirable to submit an application for a financing order. For good cause, the electric company and the District may mutually agree upon a later date of delivery and shall jointly inform the Commission of their agreement.

(b) Within 30 days of the receipt of the estimates and information required pursuant to subsection (a) of this section, the electric company shall file for the Commission's consideration and decision, an application for a financing order with respect to the repayment of Bonds for DDOT Underground Electric Company Infrastructure Improvement Activities to be funded pursuant to this chapter. The financing order application, and all subsequent applications by the electric company for a financing order, shall contain:

(1) A statement from the District containing a description of the Bond issue or issues, including the principal amount or amounts, expected financing costs, expected interest rate or rates, forecasted average term and retirement schedule, and estimates of the DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirements that will enable the District to pay the debt service and financing costs associated with Bonds issued pursuant to this chapter;

(2) A calculation by the electric company of the estimated DDOT Underground Electric Company Infrastructure Improvement Charges, the level of the expected charge by distribution service customer class, and the calculated amount estimated to be sufficient to generate an amount at least equal to the DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirement as provided by the District;

(3) A proposed form of the servicing agreement between the District, the electric company, and the Trustee;

(4) The proposed methodology for allocating DDOT Underground Electric Company Infrastructure Improvement Charges among the electric company's distribution service customer classes subject to that allocation; and

(5) A proposed form of public notice of the application suitable for publication by the Commission.

(May 3, 2014, D.C. Law 20-102, § 302, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1313.01.

§ 34-1313.03. Consideration of applications; financing order.

(a)(1) The Commission shall publish notice to the public of the application before deciding upon an application for a financing order and provide for a period of no less than 14 days for public comment and filing of motions to intervene. The electric company shall provide notice of the application to its customers in the District as provided in § 34-909, as this section reads as of May 3, 2014 or as amended or superseded.

(2) The District, OPC, and DDOT shall be a party to the Commission proceeding on the application, as a matter of right.

(3) Any other person desiring to be heard on the application shall file a motion to intervene with the Commission requesting to be made a party to the proceeding. The applicant and any party to the proceeding may file an answer to support or oppose the granting of the motion. The Commission shall, by order, approve or deny the motion at its reasonable discretion.

(b) The Commission shall decide upon an application for a financing order based upon the pleadings in the matter and, if no protest or objection is filed in response to the Commission's public notice of the application, at its discretion, without a hearing. A formal evidentiary hearing shall only be required if contested issues of material fact are present and those issues cannot be resolved by the Commission on the basis of the pleadings and discovery responses filed, if any, in the matter. In its decision, the Commission may approve, approve with conditions, modify, or reject the application in whole or in part, as it considers necessary and appropriate.

(c) The Commission is authorized to issue a financing order if the Commission finds that the DDOT Underground Electric Company Infrastructure Improvement Charges are just and reasonable.

(d) The District shall file an issuance advice letter with the Commission by 5:00 pm on the next business day after the sale of Bonds authorized by the Commission pursuant to a financing order. The issuance advice letter shall describe the DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirement for the Bonds issued pursuant to the financing order, the average term, and the retirement schedules. If the DDOT Underground Electric Company Infrastructure Improvement Annual Revenue, based on the information in the issuance advice letter, is less than the estimated DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirement in the related financing order, the Commission shall adjust the DDOT Underground Electric Company Infrastructure Improvement Charges.

(e) No DDOT Underground Electric Company Infrastructure Improvement Charges authorized by the Commission in a financing order may be billed by the electric company to customers before the issuance of Bonds by the District pursuant to subchapter II of this chapter.

(f) The Commission shall expedite its consideration of applications for financing orders. The Commission shall issue its decision on the electric

company's application no later than 60 days following the closing of the period for public comment upon the application; provided, that if a protest or objection to the application that can be resolved without an evidentiary hearing is timely filed with the Commission, this period for the Commission's decision shall be extended by an additional 15 days. This time may be tolled, at the Commission's reasonable discretion, for periods in which it determines the electric company's application is deficient. In the event that an evidentiary hearing is required, the Commission shall issue a decision no more than 60 days following the close of the hearing record.

(g)(1) The Commission is authorized to retain the services of a financial advisor to assist in its consideration of an application for a financing order, and in the formulation and administration of a financing order. The reasonable fees of the financial advisor shall be paid by the District from Bond proceeds; provided, that the District shall have no responsibility for payments to the financial advisor from any other source.

(2) Invoices by the financial advisor for such payments shall be tendered through the Commission, which shall verify the content of the invoice before forwarding the invoice to the District for payment.

(3) Payments for services made to the financial advisor shall be deemed to be DDOT Underground Electric Company Infrastructure Improvement Costs. Funds for payments to the financial advisor by the Commission are to be sourced in a similar manner as other DDOT Underground Electric Company Infrastructure Improvement Costs.

(May 3, 2014, D.C. Law 20-102, § 303, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1313.01.

§ 34-1313.04. Irrevocability of financing order.

A financing order is irrevocable and the Commission may not reduce, impair, or terminate the DDOT Underground Electric Company Infrastructure Improvement Property approved in the financing order or impair the collection or recovery of the DDOT Underground Electric Company Infrastructure Improvement Charges or DDOT Underground Electric Company Infrastructure Improvement Revenue until the Bonds issued pursuant to this chapter and the pertinent financing order have been paid in full.

(May 3, 2014, D.C. Law 20-102, § 304, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1313.01.

§ 34-1313.05. Effect of financing order.

(a) A financing order shall remain in effect until the Bonds have been paid in full and all financing costs relating to the Bonds have been paid in full.

(b) A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization, or insolvency of the electric company or any

affiliate thereof or the commencement of any judicial or non-judicial proceeding therefore.

(c) For so long as the Bonds are outstanding and the related DDOT Underground Electric Company Infrastructure Improvement Costs and the related financing costs have not been paid in full, the DDOT Underground Electric Company Infrastructure Improvement Charge shall be non-bypassable and shall apply to all of the electric company's customers located within the District and receiving electric distribution service, other than members of the electric company's residential aid discount customer class or any succeeding discount customer class.

(May 3, 2014, D.C. Law 20-102, § 305, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1313.01.

§ 34-1313.06. Limitation on Commission action.

If the Commission issues a financing order, the Commission, in the exercise of its powers and carrying out its duties, may not thereafter consider:

(1) The Bonds described in the financing order to be the debt of the electric company;

(2) The DDOT Underground Electric Company Infrastructure Improvement Charges approved in the financing order to be revenue of the electric company or the property or an asset of the electric company, or the payment of such collections to the trustee to be an expense of the electric company; or

(3) The DDOT Underground Electric Company Infrastructure Improvement Costs or the financing or other costs incurred by the District in connection with Bonds issued pursuant to this chapter to be an obligation of the electric company or to be costs included in the cost of service of the electric company.

(May 3, 2014, D.C. Law 20-102, § 306, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1313.01.

PART B.

SELECTION AND CONSTRUCTION OF UNDERGROUND INFRASTRUCTURE IMPROVEMENT PROJECTS.

§ 34-1313.07. Underground infrastructure improvement projects plan.

(a) Within 45 days of May 3, 2014, and no later than September 30, 2016, September 30, 2019, and September 30, 2022, the electric company and DDOT shall jointly file with the Commission and concurrently serve upon the OPC an application for approval of their triennial Underground Infrastructure Improvement Projects Plan.

(b) No later than September 30 of each year in which an application for approval of a triennial Underground Infrastructure Improvements Project Plan is not filed, the electric company and DDOT shall file a status report on the completion during the previous year and the scheduled completion during the next year of Electric Company Infrastructure Improvement Activity contained in the current triennial Underground Infrastructure Improvement Projects Plan, or an amendment to an Underground Infrastructure Improvements Project Plan as approved by the Commission pursuant to § 34-1313.10.

(c) As part of the initial application for approval of the triennial Underground Infrastructure Improvement Projects Plan filed pursuant to subsection (a) of this section, the electric company shall request authority to impose and collect specified Underground Project Charges from its electric distribution service customers to recover the Electric Company Infrastructure Improvement Costs associated with the Underground Infrastructure Improvement Projects Plan.

(May 3, 2014, D.C. Law 20-102, § 307, 61 DCR 1882.)

Section references. — This section is referenced in § 34-1313.09.

Legislative history of Law 20-102. — Law 20-102, the "Electric Company Infrastructure Improvement Financing Act of 2014," was introduced in Council and assigned Bill No. 20-387. The Bill was adopted on first and second readings on January 7, 2014, and February 4, 2014, respectively. Signed by the Mayor on March 3, 2014 it was assigned Act No. 20-290 and transmitted to Congress for its review. D.C. Law 20-102 became effective on May 3, 2014.

§ 34-1313.08. Content of application and plan.

(a) An application to the Commission by the electric company and DDOT for approval of the triennial Underground Infrastructure Improvement Projects Plan shall include:

(1) The ranking reliability performance of individual feeders as follows:

(A) A measurement and ranking of the reliability performance of each of the electric company's overhead and combined overhead-underground mainline primary and lateral feeders in the District over the preceding 3 years, using the primary selection criteria set forth in paragraph (2) of this subsection; and

(B) On the basis of the foregoing rankings, an identification of the electric company's recommended selection of mainline primary and lateral feeders that will utilize DDOT Underground Electric Company Infrastructure Improvements identified in the plan;

(2) Primary selection criteria as follows: With respect to all sustained interruptions (inclusive of major service outages and District major event days) occurring on each overhead and combined overhead-underground mainline primary and lateral feeder circuits in the District, the most recent 3 calendar years average of the following, weighted equally:

(A) Number of outages per feeder;

(B) Duration of the outages occurring on the feeder; and

(C) Customer minutes of interruption on the feeder; and

(3) Additional content to be included in the plan by the electric company as follows:

(A) In addition to the measurements, rankings, and selections required by paragraphs (1) and (2) of this subsection, the Underground Infrastructure Improvements Projects Plan shall include for each mainline primary and lateral feeder recommended by the electric company to be placed underground an identification and description of the feeder number and the feeder location (by street address, ward, and neighborhood);

(B) Overhead electrical cables, fuses, switches, transformers, and ancillary equipment, including poles, to be relocated underground or removed;

(C) Overhead primary and lateral feeders that are currently located parallel to the selected primary and lateral feeders that the electric company recommends to be placed underground;

(D) Overhead secondary feeder circuits and ancillary facilities, and telecommunications and cable television cables and ancillary aboveground equipment, including poles, that will not be relocated underground or removed;

(E) Proposed Electric Company Infrastructure Improvements and DDOT Underground Electric Company Infrastructure Improvements funded by DDOT Underground Electric Company Infrastructure Improvement Charges;

(F) New distribution automation devices and segmentation capability to be obtained thereby;

(G) Interties that will enable the feeder to receive power from multiple directions or sources; and

(H) The capability to meet current load and future load projections.

(b) Within 90 days after the Underground Infrastructure Improvements Projects Plan is approved by the Commission, the electric company and DDOT shall identify the estimated start date and projected end date for each project approved in the plan. In determining the construction start date and projected end date, the electric company and DDOT shall consider the following secondary criteria:

(1) The ability to coordinate the DDOT Electric Company Infrastructure Improvement Activities with DDOT roadwork and other projects that involve disruption to and subsequent restoration of road surface or that otherwise impede the flow of traffic along the roadway where the undergrounding work is to occur;

(2) The estimated economic value or other benefits to be gained by the electric company's customers from the projected reductions in outage frequencies and durations when the Electric Company Infrastructure Improvements are completed; and

(3) For Electric Company Infrastructure Improvement Activity involving a cross-jurisdictional feeder circuit, a showing of the means by which the electric company has storm-hardened its distribution system or has otherwise improved the resilience of service to its District customers on the cross-jurisdictional feeder with respect to major service outage events occurring outside the District's boundaries on the portion of the cross-jurisdictional feeder located outside of the District.

(c) The electric company and DDOT shall include the following information

for the Underground Infrastructure Improvements Project Plan in the application:

(1) An itemized estimate of the project plan's Electric Company Infrastructure Improvement Costs and the proposed Underground Project Charges for the costs shown;

(2) An itemized estimate of the DDOT Underground Electric Company Infrastructure Improvement Costs;

(3) An assessment of potential obstacles to the timely completion of a project, including, but not limited to, the need to obtain environmental or other permits or private easements, the existence of historically sensitive sites, required tree removal, and significant traffic disruptions;

(4) A description of the efforts taken to identify District residents to be employed by the electric company and DDOT contractors during the construction of the DDOT Underground Electric Company Infrastructure Improvements and the Electric Company Infrastructure Improvements contained in the annual Underground Infrastructure Improvement Projects Plan;

(5) An explanation of the availability of alternate funding sources, if any, for relocation of the overhead equipment and ancillary facilities that will utilize DDOT Underground Electric Company Infrastructure Improvements, such as contributions in aid of construction, the grant of federal highway or economic development funds, and other sources;

(6)(A) An exhibit setting forth the proposed Underground Project Charges, work papers calculating the derivation of these charges, the proposed allocation of billing responsibility among the electric company's distribution service customer classes for the Underground Project Charges, and a worksheet depicting the:

(i) Projected total expenses;

(ii) Capital costs;

(iii) Depreciation expenses;

(iv) Annual revenue requirement, rate of return on equity, as set by the Commission in the most recently decided rate base case; and

(v) Allocation of billing responsibility utilized in these calculations.

(B) This exhibit shall include the proposed accounting treatment for the costs to be recovered through these charges, which shall provide that no costs recovered through Underground Project Charges shall also be afforded rate base or other treatment that would incorporate recovery of Underground Project Charges into the design of the electric company's base tariff rates until such time as the electric company shall request the transfer of these costs into rate base and the discontinuance of the costs being recovered in the Underground Project Charge;

(7) Other information the electric company or DDOT considers material to the Commission's consideration of the application;

(8) Identification and contact information of one or more individuals who may be contacted by the Commission with formal or informal requests for clarification of any material set forth in the application or requests for additional information;

(9) A proposed form of public notice of the application suitable for publication by the Commission; and

(10) A protocol to be followed by the electric company and DDOT to provide notice and to coordinate engineering, design, and construction work performed pursuant to this chapter with the gas company, water utility, and other utilities that own or plan to construct, as approved by the Commission where applicable, facilities that may be affected by DDOT Underground Electric Company Infrastructure Improvement Activity or Electric Company Infrastructure Improvement Activity.

(d) Notwithstanding the primary selection criteria set forth in subsection (a) of this section, the Commission may, on its own motion or upon request by the electric company, OPC, or any other party, waive the application of these criteria as to the selection of a particular mainline primary and lateral feeder when to do so is required to relieve an emergency or to correct or forestall a gross inequity or disparity in the customer impacts associated with past, current, or anticipated electric distribution service outages or when actual field conditions or coordination with other projects or such other considerations as the Commission may find reasonably justifies modification of the selection criteria.

(e) Notwithstanding the foregoing, nothing in this section shall require the electric company to obtain Commission authorization to construct and operate a new underground electric plant or impair the Commission's authority to determine just and reasonable rates with respect to the electric company's recovery of costs associated with the construction and operation of the underground electric plant, including capital costs, when such costs are to be recovered through rates, as approved by the Commission pursuant to § 34-901 and not through the DDOT Underground Electric Utility Infrastructure Improvement Charges or Underground Project Charges.

(May 3, 2014, D.C. Law 20-102, § 308, 61 DCR 1882.)

Section references. — This section is referenced in § 34-1313.10, § 34-1313.12, § 34-1313.13, and § 34-1313.19.

Legislative history of Law 20-102. — See note to § 34-1313.07.

§ 34-1313.09. Consideration of triennial Underground Infrastructure Improvement Projects Plan.

(a)(1) Before deciding upon an application for an order approving the triennial Underground Infrastructure Improvement Projects Plan, the Commission shall first publish notice to the public of the application and provide for a period of no less than 60 days for public comment and filing of motions to intervene. The electric company shall provide notice of the application to its customers in the District as provided in § 34-909, as this section reads as of May 3, 2014, or as amended or superseded.

(2) The District, OPC, and DDOT shall be a party to the Commission proceeding on the application as a matter of right.

(3) Any other person desiring to be heard on the application shall file a motion to intervene with the Commission requesting to be made a party to the proceeding. The applicant and any party to the proceeding may file an answer

to support or oppose the granting of the motion. The Commission shall, by order, approve or deny the motion at its reasonable discretion.

(b)(1) Within 30 days of May 3, 2014, the Commission shall issue an order establishing an expedited discovery schedule that shall be used in all proceedings commenced following the filing of an application for approval of a triennial Underground Infrastructure Improvement Projects Plan pursuant to § 34-1313.07. The period for discovery shall commence on the date that the application is filed with the Commission and shall continue for 60 days; provided, that the Commission, in its discretion, may toll the time for periods if it determines that a party has not complied with the discovery rules established pursuant to this section. Any Commission order extending the 60-day discovery period shall also provide for an extension of equal length to the deadline for public comments on the application. The discovery process established by the Commission pursuant to this section shall provide for submission of information requests and reasonable periods for responses on shortened timelines consistent with the 60-day discovery period and the use of all reasonable procedures for expediting the discovery process, such as discovery conferences.

(2) The discovery process shall:

(A) Permit parties to such proceedings to inspect all the relevant data, documents, studies, analyses, and work papers that form the basis of the triennial Underground Infrastructure Improvement Projects Plan and any revenue requirements or charges provided therein; and

(B) Afford the parties the rights provided under Chapter 1 of Title 15 of the District of Columbia Municipal Regulations.

(c)(1) The Commission shall decide upon an application for an order approving a triennial Underground Infrastructure Improvement Projects Plan based upon the pleadings in the matter and, if no protest or objection is filed in response to the Commission's public notice of the application, at its discretion, without a hearing.

(2) A formal evidentiary hearing shall be required if contested issues of material fact are present and those issues cannot be resolved by the Commission on the basis of the pleadings and discovery responses filed, if any, in the record of the matter.

(3) The Commission shall, in addition to any other hearing or procedures, convene a public community hearing to receive the testimony and comments of the public. In its decision, the Commission may approve, approve with conditions, or reject the application, in whole or in part, as it considers necessary and appropriate.

(d) The Commission shall expedite its consideration of an application seeking an order approving a triennial Underground Infrastructure Improvement Projects Plan. The Commission shall issue its decision on the application no later than 45 days following the deadline for public comment on the application; provided, that if a protest or objection to the application is timely filed with the Commission and can be resolved without an evidentiary hearing, this period for the Commission's decision is extended by an additional 15 days. The computation of this time may be tolled, at the Commission's discretion, for

periods in which it determines the electric company and DDOT's joint application is deficient. If an evidentiary hearing is required, the hearing shall, in the Commission's discretion and based upon the Commission's evaluation of all relevant factors, commence on the date set by the Commission and be concluded within 45 days of the close of discovery and the Commission shall issue a decision no more than 60 days of the close of the hearing record.

(May 3, 2014, D.C. Law 20-102, § 309, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1313.07.

§ 34-1313.10. Commission order.

(a) Upon making the findings described in subsection (b) of this section, the Commission shall issue an order approving or denying the application and triennial Underground Infrastructure Improvement Projects Plan to authorize the proposed DDOT Underground Electric Company Infrastructure Improvement Activity, Electric Company Infrastructure Activity, and the subsequent imposition of Underground Project Charges. The Commission shall have the authority to impose in its order and to condition the electric company's exercise of the rights granted therein on such reasonable terms and conditions as it determines necessary to further the purposes of this chapter. If the Commission denies all or part of a triennial Underground Infrastructure Improvement Project Plan or related cost recovery, the electric company shall be allowed to recover all prudent and reasonable expenses and costs associated with the development of the Underground Infrastructure Improvement Projects Plan, including preliminary engineering design work required to fulfill the requirements of the application in its Underground Project Charge.

(b) For the electric company to recover expenses and costs pursuant to subsection (a) of this section, the Commission shall find that:

(1) The electric company's application satisfies the applicable requirements of § 34-1313.08;

(2) The proposed Electric Company Underground Infrastructure Improvements are appropriately designed and located;

(3) The intended reliability improvements will accrue to the benefit of the electric company's customers;

(4) The projected costs associated with the proposed Electric Company Underground Infrastructure Improvement Activity are prudent;

(5) The projected DDOT Underground Electric Company Infrastructure Improvement Costs funded by DDOT Underground Electric Company Infrastructure Improvement Charges are prudent;

(6) The electric company's proposed Underground Project Charges will be just and reasonable; and

(7) The grant of the authorizations and approvals sought by the electric company and DDOT in their joint application is otherwise in the public interest.

(c) In addition to other terms and conditions considered necessary and appropriate by the Commission, the Commission's order shall include:

(1) Authorization for the electric company to impose and collect the Underground Project Charges from its distribution service customers in the District in accordance with the distribution service customer class cost allocations approved by the Commission for the electric company and in the electric company's most recent base rate case; provided, that no such charges shall be assessed against customers served under the electric company's residential aid discount or a succeeding discount program;

(2) Authorization for the electric company to bill the Underground Project Charges to customers as a volumetric surcharge;

(3) Approval of the annual revenue requirement, which shall include the rate of return on equity as set by the Commission in the most recently decided rate base case used in calculating the Underground Project Charges; and

(4) A description of the frequency of project construction update reports for the DDOT Underground Electric Company Infrastructure Improvements funded by DDOT Underground Electric Company Infrastructure Improvement Charges and the Electric Company Infrastructure Improvements as set forth in the triennial Underground Infrastructure Improvement Projects Plan, as approved by the Commission, to be filed by DDOT and the electric company with the Commission and with a copy concurrently served upon OPC.

(d) Notwithstanding the foregoing, the Commission shall have no authority to issue any order that would cause the total amount of Electric Company Infrastructure Improvements Costs recovered through Underground Project Charges to exceed $500 million; provided, that this limit shall not apply to the recovery of the electric company's rate of return, as approved by the Commission, included in the calculation of the Underground Project Charges. The electric company shall have no obligation to incur Electric Company Infrastructure Improvement Costs in excess of the aggregate amount approved for current recovery through the Underground Project Charge pursuant to one or more final orders of the Commission.

(May 3, 2014, D.C. Law 20-102, § 310, 61 DCR 1882.)

Cross references. — As to the applicability of the charges authorized by §§ 34-1313.01 and § 34-1313.10, see § 34-1315.01.

Section references. — This section is referenced in § 34-1313.07, § 34-1313.12, and § 34-1313.15.

Legislative history of Law 20-102. — See note to § 34-1313.07.

§ 34-1313.11. Use of DDOT Underground Electric Company Infrastructure Improvements.

(a) Upon completion of construction by DDOT and acceptance by the electric company, the District shall transfer legal title to the DDOT Underground Electric Company Infrastructure Improvements to the electric company for the sum of one dollar.

(b) DDOT Underground Electric Company Infrastructure Improvements shall be for exclusive use by the electric company. The electric company shall not earn a return on or of investment with respect to the DDOT Underground Electric Company Infrastructure Improvements transferred to the electric company as provided in this section. Taxes and fees, if any, on the transfer

shall be recoverable by the electric company in rates as approved by the Commission.

(May 3, 2014, D.C. Law 20-102, § 311, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1313.07.

§ 34-1313.12. Content of an application to amend an Underground Infrastructure Improvement Projects Plan.

An application to the Commission by the electric company or DDOT to amend an existing Underground Infrastructure Improvement Projects Plan, approved by the Commission pursuant to § 34-1313.10, shall describe the purpose to be accomplished by the proposed amendment, the financial impacts, if any, to the electric company's customers that are likely to result from the amendment, if approved, and include each item set forth in § 34-1313.08; provided, that for good cause shown in its application, the electric company may omit the material required in one more of the items listed in § 34-1313.08.

(May 3, 2014, D.C. Law 20-102, § 312, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1313.07.

§ 34-1313.13. Application to amend order authorizing Underground Project Charges.

An application to amend an existing Commission order authorizing the electric company to impose and collect Underground Project Charges shall describe the purpose to be accomplished by the proposed amendment, the financial impacts, if any, to the electric company's customers that are likely to result from the amendment, if approved, and shall include each item set forth in § 34-1313.08(c). The application to amend shall apply only to future Underground Project Charges and any approval of an application shall allow for recovery by the electric company through Underground Project Charges of any prudent and reasonable expenses or costs for any project previously approved by the Commission.

(May 3, 2014, D.C. Law 20-102, § 313, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1313.07.

§ 34-1313.14. Approval of schedule provisions applying the true-up mechanism to DDOT Underground Electric Company Infrastructure Improvement Charge.

(a) Following the issuance of a series of Bonds, the electric company, or other

person as may be designated by the Commission, shall file with the Commission, no later than April 1 of each year, or more frequently as necessary and as provided in the financing order, a request for approval of a schedule applying the true-up mechanism to the DDOT Underground Electric Company Infrastructure Improvement Charges authorized under the financing order, based on factors set forth in the financing order.

(b) A request for approval of a schedule filed pursuant to this section shall include, at a minimum, a narrative description of the proposed adjustments, a proposed form of public notice of the request suitable for publication by the Commission and the following exhibits, as applicable:

(1) A showing that the allocation of DDOT Underground Electric Company Infrastructure Improvement Charges among the electric company's distribution service customer classes conforms to the distribution service customer class cost allocations approved by the Commission in the electric company's most recent base rate case; provided, that no such charges shall be assessed against customers served under the electric company's residential aid discount or a succeeding discount program;

(2) Billing and collection data that show the proposed adjustment is expected to generate payments that correspond to the DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirement;

(3) A showing that the proposed adjustment is expected to result in neither a net over-collection nor under-collection of the DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirement; and

(4) Accounting work papers showing the electric company's prior year's receipts and disbursements of the DDOT Underground Electric Company Infrastructure Improvement Charges.

(c) The Commission's review of a request for approval of a schedule filed pursuant to subsection (a) of this section shall be limited to a determination of whether there is any mathematical error in the application of the true-up mechanism to the DDOT Underground Electric Company Infrastructure Improvement Charges.

(d) Any interested party may file comments with the Commission with respect to the mathematical accuracy of the electric company's calculations in the application of the true-up mechanism within 10 days of the filing of the electric company's request for approval of a schedule applying the true-up mechanism to the DDOT Underground Electric Company Infrastructure Improvement Charges. The Commission shall act upon a request for approval of a schedule filed pursuant to subsection (a) of this section within 20 days of the end of the comment period. If the Commission does not act within this 20-day period to correct any mathematical error, the request for approval of a schedule filed pursuant to subsection (a) of this section shall be deemed approved. The DDOT Underground Electric Company Infrastructure Improvement Charges set forth in the schedule shall take effect, subject to refund and adjustment, on the date the schedule is filed with the Commission.

(e) No schedule applying the true-up mechanism to the DDOT Underground Electric Company Infrastructure Improvement Charges that is approved or

deemed approved under this section shall in any way affect the irrevocability of the pertinent financing order approved pursuant to § 34-1313.01.

(May 3, 2014, D.C. Law 20-102, § 314, 61 DCR 1882.)

Section references. — This section is referenced in § 34-1313.01.

Legislative history of Law 20-102. — See note to § 34-1313.07.

§ 34-1313.15. Application for approval of annual adjustment of Underground Project Charges.

(a) No later than April 1 of each year following issuance of an order authorizing the imposition and collection of Underground Project Charges and for as long as such order remains in effect, the electric company shall file with the Commission an application for approval of the electric company's proposed adjustment to set the Underground Project Charges until the next proposed adjustment is approved by the Commission; except, that the Commission may approve any such adjustment sooner in an order approving a triennial Underground Infrastructure Improvement Projects Plan.

(b) Concurrent with filing an application for approval of an annual adjustment that would adjust the level and, if applicable, the allocation between distribution service customer classes of the Underground Project Charges, the electric company shall provide notice to its customers of the application, in the manner provided in § 34-909.

(c) An application filed pursuant to this section shall include, at a minimum, a narrative description of the proposed adjustments, a proposed form of public notice of the application suitable for publication by the Commission and, as applicable:

(1) A description of the Electric Company Infrastructure Improvement Activity initiated or completed during the previous calendar year, the costs of which are to be recovered through the Underground Project Charges as approved by a Commission order issued pursuant to § 34-1313.10;

(2) The estimated cost of the Electric Company Infrastructure Improvement Activity;

(3) A calculation or re-calculation of the electric company's annual revenue requirement to take into account the effects of accumulated depreciation and changes as to any cost component due to the adoption of new base tariff rates in the prior calendar year as well as any actual or estimated under-collection or over-collection;

(4) A demonstration that the Underground Project Charges, authorized pursuant to § 34-1313.10, are calculated to meet the electric company's annual revenue requirement for Electric Company Infrastructure Improvement Costs;

(5) A demonstration that the allocation of Underground Project Charges among the electric company's distribution service customer classes conforms to the distribution service customer class cost allocations approved by the Commission in the electric company's most recent base rate case; provided, that no such charges shall be assessed against customers served under the electric company's residential aid discount or a succeeding discount program;

(6) The period of time over which the Underground Project Charges are to be collected; and

(7) Accounting work papers showing the electric company's prior year's receipts and disbursements of Underground Project Charges.

(d)(1) Protests may be filed in opposition to the electric company's application to adjust the Underground Project Charges within 10 days of the publication of the public notice; provided, that protests shall be limited to the proposed adjusted Underground Project Charge and materials submitted in support thereof, and whether the proposed adjustment is consistent with the underlying order authorizing the imposition and collection of the Underground Project Charge, as most recently approved by the Commission. Protests shall not challenge the scope and composition of the Electric Company Infrastructure Improvement Activity unless, and only to the extent that, changes in the scope and composition of the Electric Company Infrastructure Improvement Activity are proposed in the application to adjust the Underground Project Charges submitted pursuant to this section.

(2) If a timely protest is filed objecting to the proposed adjustment of the Underground Project Charges, the Commission shall rule upon the protest no later than 20 days from the date of the publication of the public notice.

(e) The proposed adjusted Underground Project Charges shall take effect, subject to refund and adjustment, on the date of filing with the Commission. If no objection is timely filed, or having been timely filed, is denied by the Commission, the proposed charges shall become final and no longer subject to refund or adjustment on the date of a final decision as set forth in subsection (f) of this section, unless the Commission rules otherwise before such date.

(f)(1) The Commission shall decide an uncontested annual adjustment application within 45 days from the date filed. If a protest is filed, the time for the Commission's decision is extended by 30 days.

(2) The Commission's decision in an annual adjustment proceeding shall not re-open or amend, modify, or otherwise alter a previously issued order authorizing the imposition and collection of Underground Project Charges or amendments thereto.

(May 3, 2014, D.C. Law 20-102, § 315, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1313.07.

PART C.

EXPEDITION; RECONSIDERATION; JUDICIAL REVIEW; REVIEW AND ANALYSIS.

§ 34-1313.16. Expedition.

The Commission shall expedite its consideration of applications pursuant to §§ 34-1313.12 and 34-1313.13. In proceedings to consider the applications, the Commission's decision shall be issued no later than 120 days of the close of the

period for public comment upon the application; provided, that if a protest or objection to the application is timely filed with the Commission, the period for the Commission's decision is extended by 45 days. When calculating the time required to issue its decision, the Commission may omit any time interval for which it has determined the application to be deficient and in which a formal request for material to cure that deficiency was pending.

(May 3, 2014, D.C. Law 20-102, § 316, 61 DCR 1882.)

Legislative history of Law 20-102. — Law 20-102, the "Electric Company Infrastructure Improvement Financing Act of 2014," was introduced in Council and assigned Bill No. 20-387. The Bill was adopted on first and second readings on January 7, 2014, and February 4, 2014, respectively. Signed by the Mayor on March 3, 2014 it was assigned Act No. 20-290 and transmitted to Congress for its review. D.C. Law 20-102 became effective on May 3, 2014.

§ 34-1313.17. Reconsideration of Commission orders.

Within 120 days of May 3, 2014, the Commission shall amend its rules of practice and procedure to establish rules to expedite the reconsideration of any Commission order that will be issued to decide a matter put before it pursuant to subchapter III of this chapter.

(May 3, 2014, D.C. Law 20-102, § 317, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1313.16.

§ 34-1313.18. Judicial review of Commission orders.

A financing order, an order approving an Underground Infrastructure Improvement Projects Plan, an order amending an Underground Infrastructure Improvement Projects Plan, or an order approving an annual adjustment to the Underground Project Charges are each a final order of the Commission. Any party aggrieved by the issuance of any such Commission order may apply to the Commission for reconsideration of the order in accordance with § 34-604 and, thereafter, appeal to the District of Columbia Court of Appeals in accordance with §§ 34-605 through 34-609. The Court of Appeals shall proceed to hear and determine the appeal as expeditiously as practicable and give the appeal precedence over other matters not accorded similar precedence by law.

(May 3, 2014, D.C. Law 20-102, § 318, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1313.16.

§ 34-1313.19. Review and analysis.

(a)(1) By December 31, 2019, the Mayor, the Commission, the OPC, and the electric company shall issue a jointly written report to the Council that:

(A) Evaluates the effectiveness of the DDOT Underground Electric Company Infrastructure Improvement Activity and the Electric Company Infrastructure Improvement Activity in improving the reliability of electric

power distribution service and reducing the frequency of electric power outages;

(B) Evaluates the impact of the DDOT Underground Electric Company Infrastructure Improvement Activity and the Electric Company Infrastructure Improvement Activity on tree canopy;

(C) Evaluates the impact of the DDOT Underground Electric Company Infrastructure Improvement Charges and the Underground Project Charges on the electric company's residential customers weighing the cost implications of the Underground Project Charge compared to the savings to the customers from improved reliability and the cost reductions from reducing overhead line maintenance and vegetation management;

(D) Provides recommendations regarding whether the Council should:

(i) Authorize the issuance, sale, and delivery of Bonds at an amount above the limit set forth in § 34-1312.02(a);

(ii) Adjust the limit of the electric company's investment to be recovered through the Underground Project Charges; or

(iii) Expand the undergrounding of feeders to include all or a portion of the remaining overhead mainline primary and lateral feeders or other alternatives such as to begin full undergrounding of feeders pursuant to amended selection criteria, relative to the primary and secondary selection criteria set forth in § 34-1313.08.

(2) By December 31, 2027, the Mayor, the Commission, the OPC, and the electric company shall issue a jointly written report to the Council that:

(A) Evaluates the effectiveness of the DDOT Underground Electric Company Infrastructure Improvement Activity and the Electric Company Infrastructure Improvement Activity in improving the reliability of electric power distribution service and reducing the frequency of electric power outages;

(B) Evaluates the impact of the DDOT Underground Electric Company Infrastructure Improvement Activity and the Electric Company Infrastructure Improvement Activity on tree canopy;

(C) Evaluates the impact of the DDOT Underground Electric Company Infrastructure Improvement Charges and the Underground Project Charges on the electric company's residential customers weighing the cost implications of the Underground Project Charge compared to the savings to the customers from improved reliability and the cost reductions from reducing overhead line maintenance and vegetation management;

(D) Provides recommendations regarding whether the Council should:

(i) Authorize the issuance, sale, and delivery of additional Bonds;

(ii) Adjust the limit of the electric company's investment to be recovered through the Underground Project Charges;

(iii) Expand the undergrounding of overhead feeders to include the secondary lines pursuant to new primary and secondary selection criteria to be established at that time; or

(iv) Expand the undergrounding of overhead feeders to include all secondary and service electric power lines and the removal of associated poles.

(3) The reports required by paragraphs (1) and (2) of this subsection shall include any separate statements of the Mayor, the Commission, the OPC, or

the electric company that the Mayor, the Commission, the OPC, or the electric company requests be included in a report.

(b) The Council shall conduct a public hearing in each quadrant of the District regarding the reports, findings, and recommendations that were filed pursuant to subsection (a) of this section within 90 days of the filing of each report.

(May 3, 2014, D.C. Law 20-102, § 319, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1313.16.

Subchapter IV. Commission and OPC Funding; Commission Rules and Regulations.

§ 34-1314.01. Commission and OPC funding.

(a) The costs to be incurred by the Commission and the OPC, respectively, with respect to the implementation, administration, and enforcement of this chapter and any proceedings under this chapter shall constitute expenses that are recoverable from the Public Service Commission Agency Fund and the Office of People's Counsel Agency Fund, as provided by § 34-912.

(b) For the purpose of funding the participation of OPC in the proceedings provided for by this chapter and in light of the expedited nature of those proceedings, it is necessary to ensure that OPC has available at the commencement of those proceedings the funds necessary for its participation in those proceedings. Therefore, to effect this result, any proceedings for which a commencement date or timeline is specified by this chapter shall be deemed to begin for purposes of § 34-912(a) no less than 60 days before the date specified by this chapter for commencement of the proceedings.

(May 3, 2014, D.C. Law 20-102, § 401, 61 DCR 1882.)

Legislative history of Law 20-102. — Law 20-102, the "Electric Company Infrastructure Improvement Financing Act of 2014," was introduced in Council and assigned Bill No. 20-387. The Bill was adopted on first and second readings on January 7, 2014, and February 4, 2014, respectively. Signed by the Mayor on March 3, 2014 it was assigned Act No. 20-290 and transmitted to Congress for its review. D.C. Law 20-102 became effective on May 3, 2014.

§ 34-1314.02. Commission rules and regulations.

Nothing in this chapter shall be construed to limit the Commission's authorization under § 34-2802 to adopt rules and regulations consistent with the provisions of this chapter.

(May 3, 2014, D.C. Law 20-102, § 402, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1314.01.

§ 34-1314.03. Waiver of certain permitting fees; acceptance of Bonds in lieu of cash deposits.

(a) A public inconvenience fee and steel plate fee shall not apply to Electric Company Infrastructure Improvement Activity or to the gas company for any natural gas infrastructure relocation required under the Underground Infrastructure Improvement Projects Plan for the first 60 days of construction and installation of Electric Company Infrastructure Improvements or any natural gas infrastructure relocation in the applicable portion or segment of the public space or public right-of-way where the Electric Company Infrastructure Improvements are being constructed and installed or the natural gas infrastructure is being relocated.

(b) The electric company may submit a Bond to DDOT in lieu of a cash deposit for any Electric Company Infrastructure Improvement Activity that is subject to a public space permit.

(May 3, 2014, D.C. Law 20-102, § 403, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1314.01.

§ 34-1314.04. Gas company recovery of gas plant relocation costs.

(a) The gas company may establish a regulatory asset for the operating and capital-related costs of any gas plant relocation that is necessary for the completion of DDOT Underground Electric Company Infrastructure Improvement Activity incurred by the gas company between base rate cases and that are not recovered by any other means; provided, that:

(1) The gas plant relocation work is pursuant to a written communication from DDOT informing the gas company that the relocation of certain of the gas company's gas plant is necessary for the completion of DDOT Underground Electric Company Infrastructure Improvement Activity; and

(2) The gas plant relocation work is in addition to work performed and costs incurred by the gas company in the ordinary course of business.

(b) The regulatory asset shall accrue a pre-tax rate of return at the gas company's authorized rate of return approved by the Commission in the most recent base rate case.

(c) The creation of a regulatory asset for the gas company's gas plant relocation costs shall not affect the authority of the Commission to review the prudence of costs associated with the relocation of any gas plant due to DDOT Underground Electric Company Infrastructure Improvement Activity. In any Commission proceeding reviewing the gas company's costs for any gas plant relocation that is necessary for the completion of any DDOT Underground Electric Company Infrastructure Improvement Activity, the gas company shall have the burden to prove that:

(1) The gas plant relocation was necessary for the DDOT Underground Electric Company Infrastructure Improvement Activity to be completed; and

(2) All of the gas plant relocation costs were prudently incurred.

(May 3, 2014, D.C. Law 20-102, § 404, 61 DCR 1882.)

Legislative history of Law 20-102. — See note to § 34-1314.01.

Subchapter V. General Provisions.

§ 34-1315.01. Applicability.

The DDOT Underground Electric Company Infrastructure Improvement Charge, authorized by § 34-1313.01, and the Underground Project Charge, authorized by § 34-1313.10, shall apply upon the inclusion of their fiscal effect upon the District government in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

(May 3, 2014, D.C. Law 20-102, § 501, 61 DCR 1882.)

Legislative history of Law 20-102. — Law 20-102, the "Electric Company Infrastructure Improvement Financing Act of 2014," was introduced in Council and assigned Bill No. 20-387. The Bill was adopted on first and second readings on January 7, 2014, and February 4, 2014, respectively. Signed by the Mayor on March 3, 2014 it was assigned Act No. 20-290 and transmitted to Congress for its review. D.C. Law 20-102 became effective on May 3, 2014.

CHAPTER 14A. RENEWABLE ENERGY PORTFOLIO STANDARDS.

Sec.
34-1434. Reporting requirements and compliance fee.

§ 34-1434. Reporting requirements and compliance fee.

(a) Each electricity supplier shall submit an annual compliance report to the Commission, by a date and in a form prescribed by the Commission.

(b)(1) Each report shall include clear and concise information that:

(A) Demonstrates that the electricity supplier has complied with the applicable standard under § 34-1432 and includes the submission of the required amount of renewable energy credits; or

(B) Demonstrates the amount of electricity sales by which the electricity supplier fails to meet the applicable renewable energy portfolio standard.

(2) Each report shall also include any other information that the Commission by regulation or order may consider relevant.

(c) If an electricity supplier fails to comply with the renewable energy portfolio standard for the applicable year, the electricity supplier shall pay into the Fund a compliance fee of:

(1) Five cents for each kilowatt-hour of shortfall from required tier one renewable sources;

(2) One cent for each kilowatt-hour of shortfall from required tier two renewable sources; and

(3) Fifty cents in 2011 through 2016; 35 cents in 2017; 30 cents in 2018; 20

cents in 2019 through 2020; 15 cents in 2021 through 2022; and 5 cents in 2023 and thereafter for each kilowatt-hour of shortfall from required solar energy sources.

(d) Beginning on March 1, 2010, and annually thereafter, energy companies that sell electricity in the District of Columbia shall file an energy portfolio report for the preceding calendar year with DDOE, which shall include a breakdown of the average cost per kilowatt hour of electricity that the company sold in the District of Columbia by source of generation, to include coal, gas, oil, nuclear, solar, land-based wind, off-shore wind, and other renewable sources. The breakdown of cost should also include the average capital cost per kilowatt, as well as the average fixed and variable costs associated with operations and maintenance per megawatt.

(e) Repealed.

(f) The District Department of the Environment shall publish on its website at least annually a report that describes progress towards the solar generation goals provided in the renewable energy portfolio standard and a comparison with other sources of energy used in the District. Each report shall detail the equitable distribution of resources consistent with the policy findings in § 34-1501.01.

(Apr. 12, 2005, D.C. Law 15-340, § 6, 52 DCR 2285; Oct. 22, 2008, D.C. Law 17-250, § 301(c), 55 DCR 9225; Oct. 20, 2011, D.C. Law 19-36, § 2(b), 58 DCR 6837; Dec. 13, 2013, D.C. Law 20-47, § 3, 60 DCR 15138.)

Section references. — This section is referenced in § 34-1435 and § 34-1436.

Effect of amendments.

The 2013 amendment by D.C. Law 20-47 added (f).

Legislative history of Law 20-47. — Law 20-47, the "Community Renewable Energy Amendment Act of 2013," was introduced in Council and assigned Bill No. 20-57. The Bill was adopted on first and second readings on July 10, 2013, and Oct. 1, 2013, respectively. Signed by the Mayor on Oct. 17, 2013, it was assigned Act No. 20-186 and transmitted to Congress for its review. D.C. Law 20-47 became effective on December 13, 2013.

CHAPTER 15. RETAIL ELECTRIC COMPETITION AND CONSUMER PROTECTION.

Sec.
34-1501. Definitions.
34-1501.01. Policy findings.
34-1518. Net metering.
34-1518.01. Community renewable energy facilities.
34-1521. Consumer disclosure requirements.
34-1522. Recovery of CREF implementation costs.

§ 34-1501. Definitions.

For the purposes of this chapter, the term:

(1) "Affiliate" means a person who directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has directly or indirectly, any economic interest in another person.

(2) "Aggregator" means a person who acts on behalf of customers to purchase electricity.

(3) "Aggregation program" means any system developed by an aggregator for organizing customers into a single purchasing unit.

(4) "Anticompetitive condition" means a condition which would allow a party to:

(A) Exercise vertical or horizontal market power;

(B) Use the ownership or control of a regulated facility to favor an unregulated affiliate or subsidiary or to discriminate against a non-affiliated entity;

(C) Erect a barrier to entry; or

(D) Compete unfairly or deny effective competition to consumers.

(5) "Anticompetitive conduct" means an activity which would:

(A) Violate any applicable antitrust law;

(B) Constitute favorable treatment of an affiliate;

(C) Discriminate against an unrelated entity;

(D) Constitute a barrier to entry; or

(E) Confer an unfair competitive advantage upon an entity.

(6) "Bid premium" means a payment by an electricity supplier to the Commission for the right to provide standard offer service in the District of Columbia.

(7) "Broker" means a person who acts as an agent or intermediary in the sale and purchase of electricity but who does not take title to electricity.

(8) "Competitive billing" means the right of a customer to receive a single bill from the electric company, a single bill from the electricity supplier, or separate bills from the electric company and the electricity supplier.

(9) "Commission" means the Public Service Commission of the District of Columbia.

(9A) "Community net metering" means a billing arrangement under which the monetary value of electric energy generated by a community renewable energy facility and delivered to the electric company's local distribution facilities is used to offset electric energy charges accrued during a subscriber's applicable billing period.

(9B) "Community renewable energy facility" or "CREF" means an energy facility using renewable resources defined as tier one renewable sources in § 34-1431(15) that is located within the District of Columbia and where the monetary value of electricity generated by the facility is credited to the subscribers of the facility.

(10) "Competitive Transition Charge" means a rate, charge, credit, or other appropriate mechanism authorized to be imposed for the recovery of transition costs as determined by the Commission under § 34-1510.

(11) "Consolidator" means any owner of or property manager for multi-family residential, commercial office, industrial, and retail facilities who combines more than one property for the primary purpose of contracting with an aggregator or electric energy service provider for electric energy services for those properties, and who:

(A) Does not take title to electric energy;

(B) Does not sell electric energy to buildings not owned or managed by such owner or property manager;

(C) Does not offer aggregation of electric energy services to other, unrelated end-users; and

(D) Arranges for the purchase of electric energy services only from duly licensed electric energy service providers or aggregators.

(12) "Consumer" or "customer" each means a purchaser of electricity for end use in the District of Columbia. The term excludes an occupant of a building where the owner, lessee, or manager manages the internal distribution system serving the building and supplies electricity solely to occupants of the building for use by the occupants.

(12A) "CREF credit rate" means a credit rate applied to subscribers of community renewable energy facilities which shall be equal to the standard offer service rate for the General Service Low Voltage Non-Demand Customer class or its successor, as determined by the Commission, based upon § 34-1518.

(13) "Customer-based aggregation program" means a program in which customers pool their loads to shop more effectively for electricity supply, electricity supply services, or any service declared to be a potentially competitive service.

(14) "Customer choice" or "choice of electricity suppliers" each means the right of electricity suppliers and consumers to use and interconnect with the electric distribution system on a nondiscriminatory basis in order to distribute electricity from any electric supplier to any customer. Under this right, consumers shall have the opportunity to purchase electricity supply from their choice of licensed electricity suppliers.

(15) "Customer-generator" means a residential or commercial customer that owns and operates an electric generating facility that:

(A) Has a capacity of not more than 1000 kilowatts;

(B) Uses renewable resources, cogeneration, fuel cells, or microturbines;

(C) Is located on the customer's premises;

(D) Is interconnected with the electric company's transmission and distribution facilities; and

(E) Is intended primarily to offset all or part of the customer's own electricity requirements.

(15A) "Department" means the District Department of the Environment.

(15B) "Director" means the Director of the District Department of the Environment or his or her designee.

(16) "Effective competition" means, with respect to the markets for electricity supply, billing, and those services declared by the Commission to be potentially competitive services a market structure under which an individual seller is not able to influence significantly the price of the service as a result of the number of sellers of the service, the size of each seller's share of the market, the ability of the sellers to enter or exit the market, and the price and availability of comparable substitutes for the service.

(16A) "Electric company" shall have the same meaning as provided in § 34-207.

(17) "Electricity supplier" means a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or, markets electricity for sale to customers. The term excludes the following:

(A) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants;

(B)(i) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or

(ii) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not:

(I) Take title to electricity;

(II) Market electric services to the individually-metered tenants of his or her building; or

(III) Engage in the resale of electric services to others;

(C) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and

(D) A consolidator.

(17A) "Gender identity or expression" shall have the same meaning as provided in § 2-1401.02(12A).

(17B) "Individual billing meter" means an individual meter or a set of meters when meters are combined for billing purposes.

(18) "Initial implementation date" means the first day on which customers in the District of Columbia shall have the ability to choose an electricity supplier. Unless accelerated or delayed by the Commission under § 34-1502(c), the initial implementation date shall be January 1, 2002.

(19) "Marketer" means a person who purchases and takes title to electricity as an intermediary for sale to customers.

(20) "Market participant" means any electricity supplier (including an affiliate of the electric company) or any person providing billing services or services declared by the Commission to be potentially competitive services.

(21) "Net energy metering" means measuring the difference between the electricity supplied to an eligible customer-generator from the electric grid and the electricity generated and fed back to the electric grid by the eligible customer-generator.

(22) "Pilot program" means a transitional program approved by the Commission prior to the initial implementation date under which customer choice is implemented for a percentage of each customer class.

(23) "Potentially competitive service" means a component of electric service (other than electricity supply and billing) determined by the Commission to be suitable for purchase by customers from alternative sellers under § 34-1504(e).

(24)(A) "Public purpose program" means a program implemented with the intention of furthering a public purpose.

(B) "Public purpose program" includes:

(i) A universal service program;

(ii) A program encouraging renewable energy resources;

(iii) A demand-side management or other energy efficiency or conservation program; and

(iv) A consumer education program.

(24A) "Renewable energy credit" shall have the same meaning as provided in § 34-1431(10).

(25) "Schedule" means a list of the dates on which each customer class, or a designated percentage of each customer class, is eligible for customer choice and competitive billing.

(25A) "SOS administrator" means the provider of standard offer service mandated by § 34-1509.

(26) "Standard offer service" means that electric service mandated by § 34-1509.

(27) "Subscriber" means a retail customer of the electric company who owns a subscription and who has identified an individual billing meter within the District of Columbia to which the subscription shall be attributed.

(27A) "Subscriber organization" means any for-profit or nonprofit entity permitted by District of Columbia law that owns or operates one or more community renewable energy facilities for the benefit of the subscribers.

(27B) "Subscription" means a percentage interest in a community renewable energy facility's electrical production.

(28) "Transition costs" means costs, liabilities, and investments (including regulatory assets) allocable to the District of Columbia to the extent the costs, liabilities, and investments:

(A) Traditionally have been or would be recoverable under the existing regulatory structure (with retail rates for the provision of electric service), but will not be recoverable in the restructured electricity supply market; or

(B) Arise as a result of electric industry restructuring and are related to the creation of customer choice.

(29) "Wholesale electricity supplier" means the electric company, which, pursuant to § 34-1509, obtains bids from, and contracts for electric service with, third parties and provides standard offer service to retail customers.

(May 9, 2000, D.C. Law 13-107, § 101, 47 DCR 1091; Mar. 30, 2004, D.C. Law 15-113, § 2(a), 51 DCR 1349; June 25, 2008, D.C. Law 17-177, § 18(a), 55 DCR 3696; Oct. 22, 2008, D.C. Law 17-250, § 302, 55 DCR 9225; Dec. 13, 2013, D.C. Law 20-47, § 2(a), 60 DCR 15138.)

Section references. — This section is referenced in § 34-1551 and § 34-1561.

Effect of amendments.

The 2013 amendment by D.C. Law 20-47 added (9A), (9B), (12A), (15A), (15B), (16A), (17B), (24A), (25A), (27), (27A), and (27B).

Legislative history of Law 20-47. — Law 20-47, the "Community Renewable Energy Amendment Act of 2013," was introduced in Council and assigned Bill No. 20-57. The Bill was adopted on first and second readings on July 10, 2013, and Oct. 1, 2013, respectively. Signed by the Mayor on Oct. 17, 2013, it was assigned Act No. 20-186 and transmitted to Congress for its review. D.C. Law 20-47 became effective on December 13, 2013.

§ 34-1501.01. Policy findings.

The Council of the District of Columbia adopts the following policy findings in support of community renewable energy:

(1) Local communities benefit from the deployment of tier one renewable energy in the District, and the Council hereby encourages the Department to establish programs that support development of such projects;

(2) It is in the public interest that the Department encourages broad participation in District-based tier one renewable electric generation by District residents, not-for-profit entities, and for-profit entities through outreach efforts and programs in all 8 wards;

(3) It is in the public interest that the Department enables the development and deployment of community renewable energy facilities for the following purposes:

(A) To allow renters and low- to moderate-income retail electric customers to own interests in tier one renewable energy generating facilities;

(B) To allow interests in tier one renewable energy generation facilities to be portable and transferrable;

(C) To facilitate market entry for all potential subscribers, while prioritizing those persons most sensitive to market barriers; and

(D) To encourage developers to promote participation by renters and low- to moderate-income retail electric customers; and

(4) It is in the public interest for developers to encourage participation by renters and low- to moderate-income retail electric customers.

(May 9, 2000, D.C. Law 13-107, § 101a, as added Dec. 13, 2013, D.C. Law 20-47, § 2(b), 60 DCR 15138.)

Section references. — This section is referenced in § 34-1434.

Effect of amendments. — The 2013 amendment by D.C. Law 20-47 added this section.

Legislative history of Law 20-47. — See note to § 34-1501.

§ 34-1506. Duties of the electric company.

Section references. — This section is referenced in § 34-1504.

Temporary Addition of Section.

Section 2 of D.C. Law 19-176 added D.C. Law 13-107, § 106a, to read as follows:

"Disconnection of service in extreme temperature prohibited.

"(a) For the purposes of this section, the term 'forecast of extreme temperature' means a National Weather Service forecast that the heat index for the District of Columbia will be 95 degrees Fahrenheit or above at any time during a day.

"(b) The electric company shall not disconnect residential electric service during the day preceding, and the day of, a forecast of extreme temperature. If the forecast of extreme temperature precedes a holiday or weekend day, the electric company shall not disconnect residential electric service on any day during the holiday or weekend."

Section 4(b) of D.C. Law 19-176 provided that the act shall expire after 225 days of its having taken effect.

For temporary (225 days) addition of D.C. Law 13-107, § 106a, prohibiting disconnection of service in extreme temperature, see § 2 of the Heat Wave Safety Temporary Amendment Act of 2013 (D.C. Law 20-21, October 3, 2013, 60 DCR 10878).

Emergency legislation.

For temporary (90 days) addition of D.C. Law 13-107, § 106a, concerning disconnection of service in extreme temperature, see § 2 of the

Heat Wave Safety Emergency Amendment Act of 2013 (D.C. Act 20-83, June 14, 2013, 60 DCR 9303, 20 DCSTAT 1438).

§ 34-1518. Net metering.

(a) The Commission may establish a program which affords eligible customer-generators the opportunity to participate in net energy metering.

(b) Any net energy metering program established by the Commission shall be subject to the following:

(1) The program may include, as the Commission determines will facilitate the provision of net energy metering, requirements for:

(A) Retail sellers;

(B) Owners or operators of distribution or transmission facilities;

(C) Providers of default service; or

(D) Eligible customer-generators.

(2) The Commission shall ensure that the metering equipment installed for net metering shall be capable of measuring the flow of electricity in 2 directions, and shall allocate fairly the cost of such equipment and any necessary interconnection. An eligible customer-generator's net metering system for renewable resources, cogeneration, fuel cells, and microturbines shall meet all applicable safety and performance standards. The Commission may adopt by regulation additional control and testing requirements for customer-generators that the Commission determines are necessary to protect public safety and system reliability.

(3) If the electricity supplied by an electricity supplier exceeds the electricity generated by the customer-generator and fed back into the electric grid during the billing period, the customer-generator shall be billed for the net electricity supplied by the electricity supplier in accordance with net metering rules established by the Commission.

(4) If electricity generated by the customer-generator and fed back into the electric grid exceeds the electricity supplied by the electricity supplier, the customer generator may receive compensation based on the net metering rules established by the Commission.

(5) The Commission shall establish additional rules as necessary for the electric company to implement the following provisions:

(A) A community renewable energy facility shall meet all applicable safety and performance standards. The Commission may adopt by rulemaking additional control and testing requirements for community renewable energy facilities that the Commission considers necessary to protect public safety and system reliability.

(B) The owners of, subscribers to, and any subscriber organization controlling a community renewable energy facility shall not be considered public utilities or electricity suppliers solely as a result of their interest or participation in the community renewable energy facility.

(C) Prices paid for subscriptions and contractual matters in a community renewable energy facility shall not be subject to the jurisdiction of the Commission.

(D) The subscriber organization or the third-party owner shall own the renewable energy credits associated with the electricity generated by the community renewable energy facility, unless the credits were explicitly contracted for through a separate transaction independent of any net metering or interconnection agreement or contract.

(E) The owner or operator of each community renewable energy facility shall follow all procedures for interconnection specified in Chapter 40 of Title 15 of the District of Columbia Municipal Regulations.

(F) All electricity exported to the grid by the community renewable energy facility shall become the property of the SOS administrator, pursuant to § 34-1518.01(h), but shall not be counted toward the electric company's total retail sales for purposes of Chapter 14A of this title [§ 34-1431 et seq.]. The SOS administrator shall use subscribed energy to offset purchases from wholesale suppliers for standard offer service.

(G) The monetary value of subscribed energy produced by a community renewable energy facility shall be determined as established in this section, as implemented by the Commission.

(H) The amount of electricity generated each month available for allocation as subscribed or unsubscribed energy shall be determined by a revenue quality production meter installed and paid for by the owner of the community renewable energy facility. It shall be the electric company's responsibility to read the production meter.

(I) The determination of the monetary value of credits allocated to each subscriber to a particular community renewable energy facility shall be based on each subscriber's percentage interest of the total production of the community renewable energy facility.

(J) Each billing month, the value of the credits allocated to each subscriber shall be calculated by multiplying the quantity of kilowatt hours allocated to each subscriber by the subscriber's CREF credit rate.

(K) If the value of the credits generated by the community renewable energy facility allocated to the subscriber exceeds the amount owed by the subscriber as shown on the subscriber's bill at the end of the billing period, the remaining value of the credit shall carry over from month to month until the value of any remaining credits are used.

(L) If the value of the credit generated by the community renewable energy facility allocated to the subscriber is less than the amount owed by the subscriber as shown on the subscriber's bill at the end of the applicable billing period, the subscriber shall be billed for the difference between the amount shown on the bill and the value of the available credits.

(M) If the subscriber is served by an energy supplier other than the SOS administrator, the subscriber shall be billed by the energy supplier for the full kilowatt-hours consumed by the subscriber during the billing period, and will receive the value of the credits generated by the CREF from the SOS administrator at the subscriber's CREF credit rate.

(May 9, 2000, D.C. Law 13-107, § 118, 47 DCR 1091; Dec. 13, 2013, D.C. Law 20-47, § 2(c), 60 DCR 15138.)

Section references. — This section is referenced in § 34-1501.

Effect of amendments. — The 2013 amendment by D.C. Law 20-47 added (b)(5).

Legislative history of Law 20-47. — See note to § 34-1501.

§ 34-1518.01. Community renewable energy facilities.

(a) A community renewable energy facility may produce no greater than 5 megawatts of electricity and must have at least 2 subscribers.

(b) A subscriber to an eligible community renewable energy facility may offset no more than 120% of the subscriber's electricity consumption over the previous 12 months.

(c) Each subscription shall represent a percentage of the community renewable energy facility's generating capacity; provided, that the subscription is intended primarily to offset part or all of the subscriber's own electrical requirements.

(d) All individual billing meters for subscriptions to community renewable energy facilities shall be within the District of Columbia.

(e) A community renewable energy facility may be built, owned, or operated by a third party under contract with a subscriber organization.

(f) A community renewable energy facility may add capacity and subscribers to its facility if the added capacity and subscribers do not reduce the electrical production benefit to existing subscribers.

(g) A community renewable energy facility may update its subscribers no more frequently than once per quarter. Each quarter the owner of a CREF or its designated agent shall provide the following information about its subscribers to the electric company as required to facilitate net metering for subscribers:

(1) Name, address, and account number of each subscriber; and

(2) The percentage interest of each subscriber in the capacity of the CREF;

(h) The electric company may require that a CREF and its subscribers have their meters read on the same billing cycle.

(i) If the electrical capacity of a community renewable energy facility is not fully subscribed, the SOS administrator shall purchase the energy associated with the unsubscribed capacity at the PJM Locational Marginal Price for the PEPCO zone, adjusted for ancillary service charges.

(j) Subscribers shall be eligible to receive electricity credits so long as the CREF continues to generate and provide power to the distribution grid, regardless of the bankruptcy or contractual default of any subscriber or of the subscriber organization.

(k) A community renewable energy facility shall not add subscribers without adhering to the consumer protection provisions contained in § 34-1507.

(l) A community renewable energy facility may not sell subscriptions totaling more than 100% of its energy generation.

(May 9, 2000, D.C. Law 13-107, § 118a, as added Dec. 13, 2013, D.C. Law 20-47, § 2(d), 60 DCR 15138.)

Section references. — This section is referenced in § 34-1518.

Effect of amendments. — The 2013 amendment by D.C. Law 20-47 added this section.

Legislative history of Law 20-47. — See note to § 34-1501.

§ 34-1521. Consumer disclosure requirements.

(a) An entity selling or reselling an interest in a community renewable energy facility shall provide a disclosure to the potential subscriber that includes the following, prior to the sale or resale of that subscription:

(1) A good faith estimate of the annual kilowatt hours to be delivered by the community renewable energy facility based on the size of the subscriber's interest;

(2) A plain language explanation of the terms under which the bill credits will be calculated;

(3) A plain language explanation of the contract provisions regulating the disposition or transfer of the subscription; and

(4) A plain language explanation of the costs and benefits to the potential subscriber based on the subscriber's current usage and applicable tariff, for the term of the proposed contract.

(b) The Mayor or his or her designee may require that any entity engaged in the sale or resale of a subscription in a community renewable energy facility provide additional disclosure to the buyer or lessee, the Mayor, or both.

(c) All contracts for the sale or resale of a subscription in a community renewable energy facility for use in a residential dwelling may be reviewed by the Mayor or his or her designee upon request.

(d) The Mayor pursuant to subchapter 1 of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to carry out the disclosure requirements contained in this section.

(May 9, 2000, D.C. Law 13-107, § 121, as added Dec. 13, 2013, D.C. Law 20-47, § 2(e), 60 DCR 15138.)

Effect of amendments. — The 2013 amendment by D.C. Law 20-47 added this section.

Legislative history of Law 20-47. — See note to § 34-1501.

§ 34-1522. Recovery of CREF implementation costs.

Pursuant to §§ 34-1101 and 34-901, the electric company may seek recovery of any costs associated with the implementation of this chapter in a base rate case. In a base rate case filing that includes recovery of such costs, the electric company shall include in its filing with the Commission any benefits and costs to the electric company. Any recovery of the net costs by the electric company approved by the Commission shall occur solely through a rate assessment of the subscribers.

(May 9, 2000, D.C. Law 13-107, § 122, as added Dec. 13, 2013, D.C. Law 20-47, § 2(e), 60 DCR 15138.)

Effect of amendments. — The 2013 amendment by D.C. Law 20-47 added this section.

Legislative history of Law 20-47. — See note to § 34-1501.

SUBTITLE V. TELECOMMUNICATIONS.

CHAPTER 18. EMERGENCY AND NON-EMERGENCY NUMBER TELEPHONE SYSTEM ASSESSMENTS FUND.

Sec.
34-1802. Emergency and Non-Emergency Number Telephone Calling Systems Fund.
34-1803.03. Additional revenues.

§ 34-1802. Emergency and Non-Emergency Number Telephone Calling Systems Fund.

(a) There is established a fund designated as the Emergency and Non-Emergency Number Telephone Calling Systems Fund, which shall be separate from the General Fund of the District of Columbia and shall be used solely for the purposes set forth in subsection (b) of this section. The Fund shall be funded by a tax imposed under §§ 34-1803 and 34-1803.02 and from sources identified in § 34-1803.03. All monies collected under § 34-1803, § 34-1803.02, and 34-§ 1803.03 and all interest earned on those monies, shall be deposited into the Fund without regard to fiscal year limitation pursuant to an act of Congress. All monies deposited into the Fund shall not revert to, or be transferred to, the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section, subject to authorization by Congress in an appropriations act.

(a-1) All authority and operations of the Fund shall be administered by the Office of Unified Communications.

(b) The Fund shall be used solely to defray personnel and nonpersonnel costs incurred by the District of Columbia and its agencies and instrumentalities in providing a 911 system, and direct costs incurred by wireless carriers in providing wireless E-911 service. For purposes of this subsection, the term "costs" shall include obligations incurred both before and after October 19, 2000. The Fund shall not be used for any other purpose.

(b-1) After October 1, 2008, no monies in the Fund shall be used to defray personnel costs.

(b-2) After October 1, 2010, no monies in the Fund shall be used to defray nonpersonal costs related to overhead, including energy, rentals, janitorial services, security, or occupancy costs. The Fund shall be used solely to defray technology and equipment costs directly incurred by the District of Columbia and its agencies and instrumentalities in providing a 911 system and direct costs incurred by wireless carriers in providing wireless E-911 service. The Fund shall not be used for any other purpose.

(b-3) Notwithstanding subsection (b-2) of this section, monies in the Fund may be used to defray security costs during fiscal year 2011 and fiscal year 2012.

(c) The Mayor shall submit to the Council, as a part of the annual budget, a requested appropriation for expenditures from the Fund. Any monies received but not expended in a given fiscal year shall be retained by the Fund.

(d)(1) All income and expenses of the Fund shall be audited annually by the Chief Financial Officer, who shall transmit the audit report to the Mayor and the Council.

(A) The expenses of the annual audit shall be defrayed by the Fund.

(B) The annual audit shall include the following:

(i) The assets, liabilities, fund balance, revenue, and expenditures of the Fund;

(ii) A detailed accounting of the Fund's expenditures;

(iii) Recommendations to improve the financial management processes of the Fund;

(iv) Identification of any Fund expenditures that are not permitted under law;

(v) Recommendations to improve the language of the Fund's enabling statute to reflect best practices; and

(vi) Any other information deemed important by the Chief Financial Officer.

(2) The Chief Financial Officer shall also transmit to the Mayor and Council quarterly reports summarizing the income and expenditures of the Fund.

(e) During fiscal year 2003, the Mayor shall allocate at least $500,000 of any revenue the Fund earns due to the enactment of the Emergency and Non-Emergency Number Telephone Calling Systems Fund Amendment Act of 2002 (title VII of D.C. Law 14-307), in excess of the Fund revenue projection included in the District of Columbia's budget submission to Congress, to increase the number of emergency call-taking staff who are working during hours when call volume is above average. The Mayor may increase the number of emergency call-taking staff through such measures that he considers appropriate, including hiring new staff, authorizing overtime, employing light-duty sworn police officers or firefighters, or offering a shift differential, in accordance with Chapter 6 of Title 1 and any applicable collective bargaining agreements.

(Oct. 19, 2000, D.C. Law 13-172, § 603, 47 DCR 6308; June 5, 2003, D.C. Law 14-307, § 702(a), 49 DCR 11664; Nov. 13, 2003, D.C. Law 15-39, § 502(b), 50 DCR 5668; Dec. 7, 2004, D.C. Law 15-205, § 3222, 51 DCR 8441; Sept. 18, 2007, D.C. Law 17-20, § 3022(a), 54 DCR 7052; Aug. 16, 2008, D.C. Law 17-219, § 3002(a), 55 DCR 7598; Mar. 3, 2010, D.C. Law 18-111, § 3011(a), 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, §§ 3002(b), 3052, 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, §§ 3052, 9052(a)(1), 58 DCR 6226; Sept. 20, 2012, D.C. Law 19-168, § 3042(a), 59 DCR 8025.)

Section references. — This section is referenced in § 34-1801.

Effect of amendments.

The 2012 amendment by D.C. Law 19-168, in (a), added "and from sources identified in § 34-1803.03" in the second sentence, substituted "§ 34-1803, 34-1803.02, and 34-1803.03" for "§ 34-1803 and 34-1803.02" in the third sentence, and added "or be transferred to" in the last sentence.

Emergency legislation.

For temporary (90 day) amendment of section, see § 3042(a) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 3042(a) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-168. — Law 19-168, the "Fiscal Year 2013 Budget Support Act of 2012," was introduced in Council and assigned Bill No. 19-743. The Bill was adopted on first and second readings on May 15, 2012, and June 5, 2012, respectively. Signed by the Mayor on June 22, 2012, it was assigned Act No. 19-385 and transmitted to Congress for its review. D.C. Law 19-168 became effective on September 20, 2012.

Editor's notes.

Section 3044 of D.C. Law 19-168 provided that Section 3042(a)(3) of the act shall apply as of October 1, 2011. Section 3042(a)(3) of D.C. Law 19-168 amended subsection (a) of this section by striking the phrase "All monies deposited into the Fund shall not revert to the General Fund of the District of Columbia" and inserting the phrase "All monies deposited into the Fund shall not revert to, or be transferred to, the General Fund of the District of Columbia" in its place.

§ 34-1803. Assessments.

Section references. — This section is referenced in § 34-1802 and § 34-1805.

Emergency legislation.

For temporary (90 day) addition of section, see § 3042(b) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section, see § 3042(b) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

§ 34-1803.03. Additional revenues.

All revenues from the following sources shall be deposited into the Fund:

(1) Steam (including arrearage payments) for the Correctional Treatment Facility received by the District since October 1, 2007; and

(2) From fines paid due to automated photo enforcement in any one fiscal year:

(A) Aggregate revenues in excess of $105,791,000 in fiscal year 2013;

(B) Aggregate revenues in excess of $141,348,000 in fiscal year 2014;

(C) Aggregate revenues in excess of $155,812,000 in fiscal year 2015;

(D) Aggregate revenues in excess of $148,020,000 in fiscal year 2016; and

(E) Aggregate revenues in excess of $140,618,000 in fiscal year 2017 and in each fiscal year thereafter.

(Oct. 19, 2000, D.C. Law 13-172, § 604c, as added Sept. 20, 2012, D.C. Law 19-168, § 3042(b), 59 DCR 8025; Dec. 24, 2013, D.C. Law 20-61, § 3022, 60 DCR 12472.)

Section references. — This section is referenced in § 34-1802.

Effect of amendments. — The 2012 amendment by D.C. Law 19-168 added this section.

The 2013 amendment by D.C. Law 20-61 rewrote (2).

Emergency legislation. — For temporary addition of section, see § 3042(b) of the Fiscal Year 2013 Budget Support Congressional Re-

view Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

For temporary (90 days) amendment of this section, see § 3022 of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) amendment of this section, see § 3022 of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 19-168. — See note to § 34-1802.

Legislative history of Law 20-61. — Law 20-61, the "Fiscal Year 2014 Budget Support Act of 2013," was introduced in Council and assigned Bill No. 20-199. The Bill was adopted on first and second readings on May 22, 2013, and June 26, 2013, respectively. Signed by the Mayor on Aug. 28, 2013, it was assigned Act No. 20-157 and transmitted to Congress for its review. D.C. Law 20-61 became effective on Dec. 24, 2013.

Short title. — Section 3021 of D.C. Law 20-61 provided that Subtitle C of Title III of the act may be cited as the "Automated Traffic Enforcement Enhancement Amendment Act of 2013".

Editor's notes. — Applicability of D.C. Law 20-61: Section 11001 of D.C. Law 20-61 provided that, except as otherwise provided, the act shall apply as of October 1, 2013.

SUBTITLE VI. WATER AND SEWER.

CHAPTER 22. WATER AND SEWER AUTHORITY.

Subchapter II. General Provisions

Sec.
34-2202.01. Definitions.
34-2202.03. General powers of Authority.
34-2202.06d. Water quality testing.
34-2202.06e. Water Quality Assurance Advisory Panel.
34-2202.06f. Composition and organization of the Water Quality Assurance Advisory Panel.
34-2202.06g. Wastewater study and testing.
34-2202.06h. Continued testing and remediation.
34-2202.14. Procurement system inapplicable.
34-2202.16. Charges and fees and rate setting.
34-2202.17. Transition provisions.

Subchapter II. General Provisions.

§ 34-2202.01. Definitions.

For the purposes of this chapter, the term:

(1) "Authority" means the District of Columbia Water and Sewer Authority established pursuant to § 34-2202.02(a).

(1A) "Contaminant" means a physical, chemical, biological, or radiological substance or matter in water.

(2) "Cost" means any and all reasonable expenses related to the purposes or activities of the Authority including expenses for operation and maintenance activities; expenses for preconstruction and construction, acquisition, alteration, improvement, enlargement of furnishing, fixturing and equipping, reconstruction and rehabilitation of the water distribution and sewage collection, treatment, and disposal systems of the District, including without limitation, the purchase or lease expense for all lands, structures, real or personal property, rights, rights-of-way, roads, franchises, easements, and interest acquired or used for, or in connection with the Authority; the expenses of demolishing or removing buildings or structures on land acquired by the Authority, including the expenses incurred for acquiring any lands to which

the buildings may be moved or located; the expenses incurred for all utility lines, structures or equipment charges, and interest on financial obligations incurred for a period as the Authority may reasonably determine to be necessary for the effective functioning of the water distribution and sewage collection, treatment, and disposal systems; provisions for reserves for principal and interest for extensions, operating and contingency reserves, enlargements, additions, and improvements; expenses incurred for architectural engineering, energy efficiency technology, design and consulting, financial and legal services, letters of credit, bond insurance, debt service or debt service reserve insurance, surety bonds or similar credit enhancement instruments, plans, specification studies, surveys, and estimates of expenses and of revenues; expenses necessary or incident to determining the feasibility of improvements to the water distribution and sewage collection, treatment, and disposal systems, the financing of such improvements, including a proper allowance for contingencies, and the provision of reasonable initial working capital for operating the improved systems and expenses for obtaining potable water for distribution.

(3) "Dedicated revenues" means revenues collected pursuant to water and sewer rates, fees, and charges imposed by the Authority.

(3A) "Endocrine disruptor compounds" means chemicals that can affect the hormones in the endocrine system of humans or wildlife and cause adverse physiologic effects, such as changes to the reproductive system or to the growth and development of the biological system.

(4) "Joint-use sewerage facilities" means the following:

(A) Little Falls Trunk Sewer;

(B) Upper Potomac Interceptor Sewer;

(C) Upper Potomac Interceptor Relief Sewer;

(D) Rock Creek Main Interceptor Sewer;

(E) Rock Creek Main Interceptor Relief Sewer;

(F) Potomac River Interceptor Sewer;

(G) Potomac River Sewage Pumping Station;

(H) Potomac River Force Mains;

(I) Watts Branch Trunk Sewer;

(J) Anacostia Force Main (Project 89 Sewer);

(K) Anacostia Force Main & Gravity Sewer;

(L) Outfall Sewers (Renamed Potomac River Trunk Sewers);

(M) Outfall Relief Sewers (Renamed Potomac River Trunk Relief Sewers);

(N) Upper Oxon Run Trunk Sewer;

(O) Upper Oxon Run Trunk Relief Sewer;

(P) Lower Oxon Run Trunk Sewer;

(Q) Lower Oxon Run Trunk Relief Sewer;

(R) Blue Plains Wastewater Treatment Plant (Blue Plains); and

(S) Potomac Interceptor Sewer.

(5) "Other participating jurisdictions" means Montgomery County, Maryland, Prince George's County, Maryland, and Fairfax County, Virginia.

(6) "Revenue bond" means any revenue bond, note, or other obligation (including refunding bonds, notes, or other obligations) used to borrow money

to finance, assist in financing, or to refinance undertakings authorized by § 1-204.90, and this chapter.

(7) "Service sewer" means a sewer with which connection may be directly made for the purpose of providing sewage facilities to abutting property.

(8) "Sewage collection, treatment, and disposal systems" means all the facilities used, or to be used, for the collection, transmission, treatment, and disposal of sanitary sewage and stormwater flow, including the following:

(A) Sewers carrying the following:

(i) Sewage mixed with storm and surface water;

(ii) Sewage discharged from sanitary conveniences;

(iii) Commercial or industrial wastes;

(iv) Water distributed after use;

(v) Stormwater run-off; and

(vi) Both sanitary sewage run-off and stormwater run-off;

(B) Sanitary, stormwater, and combined pumping stations;

(C) Wastewater treatment plants, including the Blue Plains Wastewater Treatment Plant; and

(D) Facilities for the processing, management, and disposal of biosolids.

(9) "Sewer" means a pipe or conduit carrying sewage or stormwater flow.

(9A) Repealed.

(9B) Repealed.

(9C) "Unregulated contaminant" means the contaminants regulated by the United States Environmental Protection Agency pursuant to the Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems set forth in 40 C.F.R. § 141.40.

(10) "Water and sewer rates" means the fees imposed by the Authority on its retail customers for water, sewer, and stormwater services pursuant to this chapter.

(11) "Water distribution system" means all the facilities used, or to be used, for the distribution of potable water situated within the public space of the District.

(Apr. 18, 1996, D.C. Law 11-111, § 201, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(b), 43 DCR 4265; June 9, 2001, D.C. Law 13-311, § 2(a), 48 DCR 3512; Mar. 25, 2009, D.C. Law 17-371, § 3(a), 56 DCR 1353; Mar. 19, 2013, D.C. Law 19-240, § 2(a), 59 DCR 14790.)

Section references. — This section is referenced in § 8-105.71 and § 8-151.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-240 added (1A), (3A), and (9C).

Legislative history of Law 19-240. — Law 19-240, the "Water Quality Assurance Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-769. The Bill was adopted on first and second readings on Nov. 1, 2012 and Nov. 15, 2012, respectively. Signed by the Mayor on Dec. 4, 2012, it was assigned Act No. 19-560 and transmitted to Congress for its review. D.C. Law 19-240 became effective on Mar. 19, 2013.

§ 34-2202.03. General powers of Authority.

In addition to the delegation of powers contained in § 34-2202.08, the Authority shall possess the following powers:

(1) To sue and be sued;

(2) To have a seal and alter the seal at its pleasure;

(3) To make, adopt, and alter by-laws, rules, and regulations for the administration and regulation of its business and affairs;

(4) To elect, appoint, or hire officers, employees, or other agents of the Authority, except Board members, including experts and fiscal agents, define their duties, and fix their compensation;

(5) To acquire, by purchase, gift, lease, or otherwise, and to own, hold, improve, use, sell, convey, exchange, transfer, lease, sublease, and dispose of real and personal property of every kind and character, or any interest therein, for its corporate purposes;

(6) To issue regulations and establish policies for contracting and procurement which are consistent with principles of competitive procurement;

(7) To accept loans, gifts, or grants of money, materials, or property of any kind from the United States, or any agency or instrumentality thereof, or the District, upon terms and conditions as may be imposed upon the Authority to the extent that the terms and conditions are not inconsistent with the limitations and laws of the District and are otherwise within the powers of the Authority;

(8) To borrow money for any of its corporate purposes and to provide for the payment of the same, as may be permitted under the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; § 1-201.01 et seq.), and the laws of the District;

(9) To issue revenue bonds pursuant to § 34-2202.09;

(10) To enter into contracts with the District, the United States, Maryland, or Virginia, or their political subdivisions, other public entities, or private entities for goods and services as needed to achieve its purposes; provided, that prior to the Authority contracting out to a private entity, a service or activity performed by employees of the Authority, through established standards developed by rules and regulations, the Authority shall establish that the contracting out will achieve increased efficiencies and cost savings to the Authority; provided further, that any contractor who is awarded a contract that displaces any District government employee of the Authority shall offer to any displaced employee a right-of-first-refusal to employment by the contractor, in a comparable available position for which the employee is qualified, for at least a 6-month period during which time the employee shall not be discharged without cause. If the employee's performance during the 6-month transition employment period is satisfactory, the new contractor shall offer the employee continued employment under the terms and conditions established by the new contractor. Any District government employee of the Authority who is displaced as a result of a contract and is hired by the contractor who was awarded the contract which displaced the employee shall be entitled to the benefits provided by the Service Contract Act of 1965, 41 U.S.C. § 351 et seq., notwithstanding any exclusion of applicability of the Service Contract Act of 1965 to the employee;

(11) To establish, adjust, levy, collect, and abate charges for services, facilities, or commodities furnished or supplied by it;

(12) To refund overcharges for services, facilities, or commodities furnished or supplied by it;

(13) To undertake any public project, acquisition, construction, or any other act necessary to carry out its purposes;

(14) To maintain, repair, operate, extend, enlarge, investigate, design, construct, and improve the water distribution and sewage collection, treatment, and disposal systems;

(15) To engage in activities, programs, and projects on its own behalf or, with the concurrence of the Mayor, jointly with other public bodies or political divisions or subdivisions of the District of Columbia;

(16) To provide for the cost of activities, programs, and projects from grants, loans, the proceeds of bonds, or from other revenues available to the Authority for such purposes;

(17) To exercise any power usually possessed by public enterprises or private corporations performing similar functions that is not in conflict with the District of Columbia Home Rule Act [§ 1-201.01 et seq.], or the laws of the District;

(18) To implement all rules, regulations, and laws relating to the distribution of water and sewage collection, treatment, and disposal, other than those laws that impose a penalty of imprisonment;

(19) To shut off water and sewer service, after notice, for good and sufficient cause;

(20) To purchase and distribute potable water to the inhabitants of the District;

(21) To purchase and distribute potable water to other jurisdictions as provided by law;

(22) To develop policies related to the proper use and distribution of water to households and public and private institutions during times of normal consumption and during emergency situations;

(23) To construct water mains and sewers in any street, avenue, road, or alley in the District under conditions as the Mayor may prescribe;

(24) To petition the Mayor to acquire property through eminent domain;

(25) To enter into contracts, including leases and lease-purchase agreements involving real property and personal property;

(26) To indicate in its records the existence and location of sewers and service sewers within its jurisdiction;

(27) To determine whether potable water should be used for mechanical and manufacturing purposes, private fountains, and street and pavement washers;

(28) To privatize the day-to-day operations of the Blue Plains Wastewater Treatment Plant; provided, that the Board of Directors of the Authority submit its recommendation on the feasibility of privatization pursuant to § 34-2202.05(g)(1) and submits the privatization contract pursuant to § 34-2202.05(g)(2);

(29) To enter into a financing lease, a service agreement or other arrangement for contracted services; obligations with respect to credit facilities; and interest rate swaps, interest rate caps, interest rate floors and any other

interest rate-related hedge agreements entered into by the Authority for the purpose of interest rate risk and asset management that may be, but need not be, entered into in conjunction with the issuance of bonds or notes by the Authority;

(30) To do all things necessary or convenient to carry out the powers expressly provided by this chapter;

(31) To determine whether churches, charitable organizations, or institutions that receive annual appropriations from Congress should be furnished with water or sewer service without charge;

(32) To collect and receive its revenues and disburse its necessary and reasonable expenses; and

(33) In collaboration with the Fire and Emergency Medical Services Department, to inspect, repair, and maintain all public fire hydrants, and to ensure that each hydrant will provide adequate flow levels to all locations in the District of Columbia.

(Apr. 18, 1996, D.C. Law 11-111, § 203, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(c), 43 DCR 4265; Apr. 9, 1997, D.C. Law 11-255, § 45, 44 DCR 1271; May 13, 2008, D.C. Law 17-158, § 2, 55 DCR 3709; Sept. 26, 2012, D.C. Law 19-171, § 90(a), 59 DCR 6190.)

Section references. — This section is referenced in § 34-2202.07.

Effect of amendments.

The 2012 amendment by D.C. Law 19-171 validated previously made technical corrections.

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

CASE NOTES

ANALYSIS

Time limitations.
Water bills.

Time limitations.

D.C. Mun. Regs. tit. 21, § 412.2 is a claim-processing rule, not a jurisdictional rule, and thus the District of Columbia Water and Sewer Authority (D.C. Water) lawfully may waive compliance with it. D.C. Water does not have to waive the time limitation in § 412.2; it can avoid potential prejudice to its operations by declining to do so. Gatewood v. District of Columbia Water & Sewer Auth., 82 A.3d 41, 2013 D.C. App. LEXIS 389 (2013).

Water bills.

With respect to a challenge to a water bill, the hearing officer must (1) accept the customer's credible, unrebutted evidence of an erroneous bill; and (2) shift the burden of evidentiary production to the District of Columbia Water and Sewer Authority once the customer has established a prima facie case of non-responsibility. Gatewood v. District of Columbia Water & Sewer Auth., 82 A.3d 41, 2013 D.C. App. LEXIS 389 (2013).

Customer that challenged his water bill did not have the burden of proving meter malfunction as part of his prima facie case; the burden as to the meter shifted to District of Columbia Water and Sewer Authority either to show that the customer's meter had functioned properly in all essential respects, or at least to present persuasive circumstantial evidence that malfunction was unlikely. Gatewood v. District of Columbia Water & Sewer Auth., 82 A.3d 41, 2013 D.C. App. LEXIS 389 (2013).

As a customer presented unrebutted evidence tending to show that his water bill was erroneous, thereby carrying his initial burden of persuasion, the burden shifted to the District of Columbia Water and Sewer Authority to produce evidence in rebuttal; as it failed to do so, the hearing officer erred in rejecting the customer's challenge to the bill. Gatewood v. District of Columbia Water & Sewer Auth., 82 A.3d 41, 2013 D.C. App. LEXIS 389 (2013).

§ 34-2202.06d. Water quality testing.

(a) Beginning in January 2014, the Authority shall conduct testing of the District's drinking water for, at a minimum, regulated contaminants included in the Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems set forth in 40 C.F.R. § 141.40.

(b) After receiving results of each test as required by the United States Environmental Protection Agency, the Authority, within 120 days or when it submits the related report to the Environmental Protection Agency, whichever comes first, shall:

(1) Report to the Mayor the results of each test; and

(2) Make the results available to the public via the Authority's website.

(Apr. 18, 1996, D.C. Law 11-111, § 206d, as added Mar. 19, 2013, D.C. Law 19-240, § 2(b), 59 DCR 14790.)

Section references. — This section is referenced in § 34-2202.06e.

Effect of amendments. — The 2013 amendment by D.C. Law 19-240 added this section.

Legislative history of Law 19-240. — See note to § 34-2202.01.

§ 34-2202.06e. Water Quality Assurance Advisory Panel.

(a) There is established the Water Quality Assurance Advisory Panel ("Panel") for the purpose of providing information to the public and guidance to the Mayor and the General Manager of the District of Columbia Water and Sewer Authority ("General Manager") on levels of unregulated contaminants in District drinking water and the presence and effects of endocrine disruptor compounds in wastewater effluent. The Panel shall make recommendations regarding the testing and treatment of the District's drinking water and wastewater.

(b) Within 90 days of the completion of one year of unregulated contaminant testing of drinking water and a study on the presence and effects of endocrine disruptor compounds in wastewater effluent, the Panel shall convene a public meeting to discuss the following:

(1) An analysis of the health and environmental impact of unregulated contaminants as tested for a full calendar year pursuant to § 34-2202.06d;

(2) Recommendations for continued monitoring of unregulated contaminants and endocrine disruptor compounds that were tested under §§ 34-2202.06d and 34-2202.06g;

(3) Additional testing for unregulated contaminants and endocrine disruptor compounds not being tested under § 34-2202.06d or § 34-2202.06g;

(4) Recommendations for improving the reduction of unregulated contaminants and endocrine disruptor compounds at their source;

(5) Methods for improving public awareness and education related to unregulated contaminants and endocrine disruptor compounds;

(6) Coordination with regional jurisdictions to improve source water quality;

(7) Information sharing related to treatment alternatives analysis conducted at the Washington Aqueduct;

(8) Treatment alternatives that reduce or eliminate unregulated contaminants in District's drinking water and endocrine disruptor compounds in wastewater effluent; and

(9) Presenting the latest research related to unregulated contaminants and endocrine disruptor compounds regarding their effect on the environment and public health to the public.

(c) Pursuant to Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems set forth in 40 C.F.R. § 141.40, 120 days after the Panel convenes, it shall issue a report to the Mayor and the General Manager summarizing the discussion set forth in subsection (b) of this section and any resulting water quality recommendations. The Panel may convene thereafter to provide the Mayor, the General Manager, and the public with additional recommendations regarding the monitoring and treatment of unregulated contaminants in the District's drinking water.

(d) The report shall be made public on the Authority's website upon submission to the Mayor.

(Apr. 18, 1996, D.C. Law 11-111, § 206e, as added Mar. 19, 2013, D.C. Law 19-240, § 2(b), 59 DCR 14790.)

Section references. — This section is referenced in § 34-2202.06f and § 34-2202.06h.

Effect of amendments. — The 2013 amendment by D.C. Law 19-240 added this section.

Legislative history of Law 19-240. — See note to § 34-2202.01.

§ 34-2202.06f. Composition and organization of the Water Quality Assurance Advisory Panel.

(a) The Panel established under § 34-2202.06e shall be composed of 9 experts who, at a minimum, demonstrate knowledge in at least one of the following professional fields:

(1) Water quality;

(2) Water treatment;

(3) Toxicology;

(4) Public health;

(5) Civil engineering; or

(6) Environmental engineering.

(b) Of the 9 Panel members, one shall be the General Manager or the General Manager's designee, and one shall be a representative from the Washington Aqueduct.

(c) Panel members shall be appointed by the Mayor in consultation with the General Manager and the Council.

(Apr. 18, 1996, D.C. Law 11-111, § 206f, as added Mar. 19, 2013, D.C. Law 19-240, § 2(b), 59 DCR 14790.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-240 added this section.

Legislative history of Law 19-240. — See note to § 34-2202.01.

§ 34-2202.06g. Wastewater study and testing.

(a) By July 1, 2013, the Authority shall initiate a study that tests for the presence of endocrine disruptor compounds in wastewater effluent.

(b) The Authority shall present the findings of the study to the Panel, the General Manager, the Mayor, and the Council within 30 days of the completion of the study.

(c) The Authority shall be required to implement the provisions of this section upon a transfer by the Chief Financial Officer of the District from the unrestricted fund balance of the General Fund of the District of Columbia to the Authority of the funding necessary to implement the provisions of this section.

(d) The District shall effectuate the transfer pursuant to subsection (c) of this section upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

(Apr. 18, 1996, D.C. Law 11-111, § 206g, as added Mar. 19, 2013, D.C. Law 19-240, § 2(b), 59 DCR 14790.)

Section references. — This section is referenced in § 34-2202.06e.

Effect of amendments. — The 2013 amendment by D.C. Law 19-240 added this section.

Legislative history of Law 19-240. — See note to § 34-2202.01.

§ 34-2202.06h. Continued testing and remediation.

(a) Upon receipt of the report from the Panel set forth in § 34-2202.06e, the General Manager shall create and implement a plan that considers potential remediation options and continued testing for unregulated contaminants and endocrine disruptor compounds in a manner consistent with the recommendations of the Panel's report.

(b) If formal remediation steps cannot be taken for a specific contaminant, the General Manager shall provide evidence of infeasibility of remediation for that contaminant.

(c) The General Manager shall submit the plan to the Mayor and the Council.

(d) The Authority shall be required to implement the provisions of this section upon a transfer by the Chief Financial Officer of the District from the unrestricted fund balance of the General Fund of the District of Columbia to the Authority of the funding necessary to implement the provisions of this section.

(e) The District shall effectuate the transfer pursuant to subsection (d) of this section upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director

of the Council in a certification published by the Council in the District of Columbia Register.

(Apr. 18, 1996, D.C. Law 11-111, § 206h, as added Mar. 19, 2013, D.C. Law 19-240, § 2(b), 59 DCR 14790.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-240 added this section.

Legislative history of Law 19-240. — See note to § 34-2202.01.

§ 34-2202.14. Procurement system inapplicable.

Except as provided in § 34-2202.17(b), Chapter 3A of Title 2 [§ 2-351.01 et seq.] shall not apply to the Authority.

(Apr. 18, 1996, D.C. Law 11-111, § 214, 43 DCR 548; Sept. 26, 2012, D.C. Law 19-171, § 216(a), 59 DCR 6190.)

Section references. — This section is referenced in § 34-2202.02.

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 substituted "Chapter 3A of Title 2" for "§ 2-301.01 et seq."

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

§ 34-2202.16. Charges and fees and rate setting.

(a) The Authority shall collect and abate charges, fees, assessments, and levies for services, facilities, or commodities furnished or supplied by it.

(b) The Authority shall, following notice and public hearing, establish and adjust retail water and sewer rates. The District members of the Board shall establish the retail water and sewer rates prior to the Board's consideration of the Authority's budget. The water and sewer rates levied by the Authority shall only be a source of revenue for the maintenance of the District's supply of water and sewage systems, and shall constitute a fund exclusively to defray any cost of the Authority.

(b-1)(1) The Authority shall offer financial assistance programs to mitigate the impact of any increases in retail water and sewer rates on low-income residents of the District, including a low-impact design incentive program.

(2) Within 6 months of March 25, 2009, the authority shall provide a report to the Council of the District of Columbia detailing the number of low-income residents affected by increases in retail water and sewer rates and strategies that will significantly increase enrollment in existing discount programs available to low-income ratepayers.

(c) In the absence of applicable standards, charges shall be levied and collected as determined by the Authority in accordance with § 1-204.87(b).

(d) The Authority may impose additional charges and penalties for late payment of bills.

(d-1) The Authority shall collect a stormwater user fee established by the

Director of the District Department of the Environment ("Director"), which charge the Director shall establish by rule and may from time to time amend.

(d-2) The fee shall be collected from each property in the District of Columbia, and shall be based on an impervious area assessment of the property.

(d-3) The Mayor shall coordinate the development and implementation of the MS4 stormwater user fee with DC WASA's impervious area surface charge, to ensure that both fee systems employ consistent methodologies.".

(d-4) The Mayor shall offer financial assistance programs to mitigate the impact of any increases in stormwater user fees on low-income residents of the District, and shall evaluate the applicability of similar existing District low-income assistance programs to the stormwater user fee.

(d-5) A landlord shall not pass a stormwater user fee charge to a tenant which is more than the stormwater user fee charge prescribed by the Director.

(d-6) The stormwater user fee shall be the obligation of the property owner. Failure to pay the stormwater user fee shall result in a lien being placed upon the property without further notice to the owner. The Mayor may enforce the lien in the same manner as in § 34-2407.02.

(d-7) Any owner or occupant of a property that is charged a stormwater user fee may contest a stormwater user fee bill rendered for managing stormwater runoff, according to the same procedures provided to owners or occupants of properties that receive water and sewer services, under § 34-2305.

(e) The Authority is authorized to shut off the water distribution to any building, establishment, or other place upon failure of the owner or occupant thereof to pay the charges, including the storm water fee, within 90 days from the date of rendition of the bill.

(Apr. 18, 1996, D.C. Law 11-111, § 216, 43 DCR 548; June 9, 2001, D.C. Law 13-311, § 2(d), 48 DCR 3512; Aug. 16, 2008, D.C. Law 17-219, § 6009, 55 DCR 7598; Mar. 25, 2009, D.C. Law 17-370, § 3(b), 56 DCR 1350; Mar. 25, 2009, D.C. Law 17-371, § 3(c), 56 DCR; Sept. 26, 2012, D.C. Law 19-171, § 90(b), 59 DCR 6190.)

Section references. — This section is referenced in § 8-152.03 and § 34-2202.19.

Effect of amendments.

The 2012 amendment by D.C. Law 19-171 validated a previously made technical correction in (d-5).

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

§ 34-2202.17. Transition provisions.

(a) Until the initial meeting of the Board, but for not longer than 180 days from April 18, 1996, the existing management structure of the Water and Sewer Utility Administration, Department of Public Works shall serve as the operator of the Authority, thereafter, the Water and Sewer Utility Administration of the Department of Public Works shall be abolished.

(b) Until the Board establishes a personnel system and a procurement

system, and until rules and regulations pertaining to the Board's duties have been promulgated, Chapter 3A of Title 2 [§ 2-351.01 et seq.] and § 1-601.01 et seq., and implementing rules and regulations shall continue to apply to the Authority.

(c) The administration of payroll services and personnel services, including benefits administration, shall be provided to the Authority by the Office of Pay and Retirement and the District of Columbia Office of Personnel at a negotiated fee. These services may be terminated by the Authority upon written notice to each provider.

(d) All collective bargaining agreements shall remain in effect until they expire, or until they are renegotiated by the Authority, whichever comes first, unless otherwise agreed upon by the parties to the collective bargaining agreements.

(e) The Treasurer of the District of Columbia shall collect retail water and sewer payments on the Authority's behalf until the Authority notifies the Treasurer that an independent collection system has been established and that retail water and sewer customers have been notified of any changes in payment procedures. Water and sewer payments collected by the Treasurer shall be expeditiously deposited into the Fund and shall not be commingled with the Cash Management Pool, the General Fund, or any other funds or accounts of the District of Columbia, except that payments made to District cashiers may be deposited directly into a District disbursement account until the Authority notifies the Treasurer that an independent disbursement system has been established. Dedicated revenues received by the District Treasurer shall be subject to any pledge of the Authority as if deposited into the Fund.

(f) The Treasurer of the District of Columbia is authorized to transfer funds from the Fund to a District disbursement account in order to pay the necessary and reasonable expenses of the Authority until the Authority notifies the Treasurer that an independent disbursement system has been established.

(Apr. 18, 1996, D.C. Law 11-111, § 217, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(l), 43 DCR 4265; Sept. 26, 2012, D.C. Law 19-171, § 216(b), 59 DCR 6190.)

Section references. — This section is referenced in § 34-2202.07, § 34-2202.14, and § 34-2202.15.

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 substituted "Chapter 3A of Title 2" for "§ 2-301.01 et seq." in (b).

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

CHAPTER 24. WATER SUPPLY, ASSESSMENTS, AND RATES.

Subchapter IV. Discontinuance of Service.

§ 34-2407.01. Discontinuance of water service for failure to pay water charges.

Section references. — This section is referenced in § 34-2110, § 34-2407.02, and § 34-2407.03.

CASE NOTES

In general.

The obligation to pay fees owed to the Water and Sewer Authority (WASA) resided with owner of apartment building when tenants failed to pay their water bills, though owner had installed water meters in each apartment and WASA had been billing tenants directly, and WASA was authorized to file a lien on the building when owner refused to pay amounts that had been overdue for more than 60 days; governing statute focused on the owner of the property where water services were rendered and not the individual tenant who received the bill, and procedures for tenant billing were a compliment for an owner's ultimate obligation. Euclid St., LLC v. D.C. Water & Sewer Auth., 41 A.3d 453, 2012 D.C. App. LEXIS 142 (2012).

§ 34-2407.02. Lien for water charges.

Section references. — This section is referenced in § 2-1215.15, § 6-1503, § 8-152.03, § 34-2109, § 34-2110, § 34-2202.16, § 34-2202.19, § 34-2403.03, § 34-2407.03, § 34-2410.03, § 47-1052, § 47-1303, § 47-1304, § 47-1306, § 47-1307, and § 47-1312.

CASE NOTES

Persons liable.

The obligation to pay fees owed to the Water and Sewer Authority (WASA) resided with owner of apartment building when tenants failed to pay their water bills, though owner had installed water meters in each apartment and WASA had been billing tenants directly, and WASA was authorized to file a lien on the building when owner refused to pay amounts that had been overdue for more than 60 days; governing statute focused on the owner of the property where water services were rendered and not the individual tenant who received the bill, and procedures for tenant billing were a compliment for an owner's ultimate obligation. Euclid St., LLC v. D.C. Water & Sewer Auth., 41 A.3d 453, 2012 D.C. App. LEXIS 142 (2012).